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# B. Ontario Securities Commission

## B.1 Notices

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- B.1.1 OSC Notice of Publication – OSC Rule 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; Companion Policy 11-502 Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs; Companion Policy 11-503 (Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs – Modernize the Process to Distribute Disgorged Amounts to Harmed Investors

**OSC NOTICE OF PUBLICATION**

**OSC RULE 11-502**

***DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS***

**COMPANION POLICY 11-502**

***DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS***

**OSC RULE 11-503**

***(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS***

**COMPANION POLICY 11-503**

***(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS***

***MODERNIZE THE PROCESS TO DISTRIBUTE DISGORGED AMOUNTS TO HARMED INVESTORS***

June 12, 2025

### Introduction

The Ontario Securities Commission (the **OSC** or the **Commission**) is publishing in final form the following materials:

- OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**);
- Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CP**);
- OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CFA Rule**); and
- Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **CFA CP**).

Collectively, the Rule and the CFA Rule are referred to as the **Rules**, and the CP and the CFA CP are referred to as the **Companion Policies** in this Notice.

The Rules and Companion Policies are available on the Commission's website at [www.osc.ca](http://www.osc.ca).

## **Background, Substance and Purpose**

On November 2, 2023, the Government introduced Bill 146, *Building a Stronger Ontario Together Act (Budget Measures), 2023*<sup>1</sup> (**Bill 146**). Bill 146 included legislative amendments to the *Securities Act (Ontario)*<sup>2</sup> (the **OSA**), the *Commodity Futures Act (Ontario)*<sup>3</sup> (the **CFA**), and the *Securities Commission Act, 2021*<sup>4</sup> (the **SCA**). These amendments establish a new statutory framework governing the distribution of money received by the Commission under disgorgement orders<sup>5</sup> to investors who incurred direct financial losses as a result of the contravention of Ontario securities law or Ontario commodity futures law giving rise to the payment. Bill 146 received Royal Assent on December 4, 2023, but the amendments related to this new statutory distribution framework will come into force at a later date to be named by proclamation of the Lieutenant Governor. The new statutory distribution framework will apply to disgorgement orders issued on or after the date the legislative amendments come into force. It is anticipated that the Rules and the Companion Policies will come into force at the same time as the legislative amendments.

The new statutory distribution framework provides that regulations (which may take the form of an OSC rule or a regulation made by the Lieutenant Governor in Council) will address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to eligible investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The OSC published the Proposed Rules and Proposed Companion Policies for comment on July 11, 2024 (the **Proposals**) to address these matters.

## **Summary of Written Comments Received by the OSC**

During the comment period, we received submissions from 8 commenters. We have considered the comments received and thank all commenters for their input. The names of commenters and a summary of their comments, together with our responses, are contained in Annex A of this Notice.

Copies of the comment letters were posted at [www.osc.ca](http://www.osc.ca).

## **Summary of Changes**

In developing the Rules and the Companion Policies, we carefully reviewed the comments we received on the Proposals. Overall, all commenters expressed support for the proposal to modernize the framework for making disgorged funds available for distribution to harmed investors and recommended changes to certain aspects of the Proposals prior to finalization. We found some of the comments recommending changes persuasive and revised the Proposals accordingly. We also made other drafting changes which are intended to clarify the interpretations of the new requirements. As these changes are not material, we are not publishing the Rules and Companion Policies for a further comment period.

Key changes to the Proposals are summarized below. The changes to the Proposals and our reasons for making them are discussed in more detail in Annex A of this Notice.

## **Titles of the Rules and Companion Policies**

- We have updated the titles of the Rules and Companion Policies to reflect that their subject matter includes both the distribution of disgorged amounts received by the Commission and the payment of related administrative costs.

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<sup>1</sup> 1st Sess, 43rd Leg, Ontario, 2023 (assented to 4 December 2023).

<sup>2</sup> R.S.O. 1990, c. S.5.

<sup>3</sup> R.S.O. 1990, c. C.20.

<sup>4</sup> S.O. 2021, c. 8, Sched. 9.

<sup>5</sup> Disgorgement orders may be made by the Capital Markets Tribunal (**Tribunal**) under paragraph 10 of subsection 127(1) of the OSA and paragraph 10 of subsection 60(1) of the CFA, or by the Superior Court of Justice under paragraph 15 of subsection 128(3) of the OSA and paragraph 11 of subsection 60.2(3) of the CFA.

### ***Definition of Eligible Applicant***

- We have added guidance in the Companion Policies to clarify that in circumstances where an investor is unable to participate in the claims process directly due to illness or incapacity, a person such as a trustee, executor or other legal representative may file a claim on behalf of the investor. The definition of an eligible applicant includes a “person” or “company”, and a “person”<sup>6</sup> is defined under the OSA and CFA to include a trustee, executor or other legal representative.

### ***Requirement to Distribute***

- We have added a new exception under subsection 2 (1) of the Rules to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired, or an appeal of the decision has been filed, and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted. This clarification is necessary given that a decision of the Tribunal takes effect immediately despite the fact that an appeal is taken, unless the Tribunal or the Divisional Court grants a stay until disposition of the appeal.<sup>7</sup>
- We have added guidance to the Companion Policies to clarify that in circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will promote cost-efficient distributions by allowing for a single distribution of all disgorged amounts received in relation to the same contravention.
- We have revised the wording in subsections 2 (2) through (4) of the Rules to clarify the intention that the factors described in subsection 2 (1) of the Rules, being “the costs of administering the distribution”, the “value of the amount received under the disgorgement order” and “the number of potential eligible applicants,” will be applied to the particular facts of the case in determining whether to proceed with a distribution of amounts received rather than applying a specific monetary threshold.
- Subsection 2 (2) of the Rules has been revised to clarify that where the Commission receives only part of an amount owing under a disgorgement order, the Commission must hold the amount for potential future distribution to eligible applicants up to 3 years from the date of the final disposition of the disgorgement order. As noted in the Companion Policies, during this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:
  - the status of any ongoing collection efforts,
  - the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
  - the anticipated costs of carrying out one or more distributions.

### ***Publication of Disgorgement Amounts and Notice of Claims Process***

- Subsection 4 (1) of the Rules has been revised to include a requirement for the Commission to also issue a press release when the notice of claims process is posted on the OSC's website.
- Further, in an effort to provide timely and effective notice to harmed investors when a distribution takes place, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. Investors will also be able to update their contact information if it changes. A reference to this new system has been added to the Companion Policies.

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<sup>6</sup> OSA, s. 1 (1); CFA, s. 1 (1).

<sup>7</sup> OSA, s. 10 (2); CFA, s. 6 (2).

### **Claim Determinations**

- We have revised the guidance in the Companion Policies relating to section 10 of the Rule to remove the reference to Commission staff's role in administering the claims process, as the Commission's operational processes may evolve over time.

### **Opportunity to provide additional supporting documentation**

- To provide certainty to the Commission and applicants regarding the deadline for submitting additional supporting documentation, subsection 11 (1) of the Rules has been revised to clarify that the applicant has "35 days from the date of the notice" informing them of the Commission's intention to deny all or part of their claim to provide any additional supporting documentation that would substantiate their claim (instead of "30 days from the date the notice was delivered" to the applicant). Subsection 11 (3) describing when a notice is deemed to be delivered has been deleted.

### **Residual Funds**

- We have added guidance in the Companion Policies to clarify that payments will generally be deposited directly into the approved applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. The Companion Policies further clarify that cheques may be issued in exceptional circumstances.

### **Coming-Into-Force**

The Rules and other required materials were delivered to the Minister of Finance on or about June 12, 2025. The Minister may approve or reject the Rules or return them for further consideration. If the Minister approves the Rules or does not take any further action by August 26, 2025, the Rules will come into force on the later of: (a) August 26, 2025, and (b) the day on which sections 6, 7 and 10 of Schedule 1, sections 8, 9, and subsections 11(2) and (5) of Schedule 10, and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

### **Contents of Annexes**

The following annexes form part of this Notice:

- Annex A – List of Commenters and Summary of Comments and Responses
- Annex B – OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex C – Blackline showing changes to OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex D – Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex E – Blackline showing changes to Companion Policy 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex F – OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex G – Blackline showing changes to OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex H – Companion Policy 11-503 (*Commodity Futures Act*) *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*
- Annex I – Blackline showing changes to Companion Policy 11-503 (*Commodity Futures Act*) *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs*

**Questions**

Please refer your questions to:

Cullen Price  
Associate General Counsel, Litigation and Strategic Priorities  
General Counsel's Department  
(647) 501-8195  
cprice@osc.gov.on.ca

Tara Lamacraft  
Senior Legal Counsel  
General Counsel's Department  
(416) 263-7729  
tlamacraft@osc.gov.on.ca

Namita Balgi  
Senior Legal Counsel  
General Counsel's Department  
(416) 593-2371  
nbalgi@osc.gov.on.ca

**ANNEX A****LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES**

This Annex provides the list of commenters and summarizes the written public comments we received with respect to the July 11, 2024, publication for comments of Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders*, Proposed OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts Paid to the OSC under Disgorgement Orders* (together “Rules”) and related Companion Policies, and our responses to those comments.

**I. List of Commenters**

We received submissions from eight commenters listed below:

1. Investment Industry Association of Canada
2. The Canadian Advocacy Council of CFA Societies Canada
3. James Sinclair (OSC Investor Advisory Panel)
4. Katie Walmsley and Warren M. Rudick (Portfolio Management Association of Canada)
5. Jean-Paul Bureaud (FAIR Canada)
6. Brigitte Catellier, Rita Yang, Raagavi Ramenthiran, Yubo Wang (The Osgoode Investor Protection Clinic)
7. Harvey S. Naglie
8. Ken Kivenko (Kenmar Associates)

For ease of reference, these submissions and our responses are categorized by common themes.

**II. Summary of Comments and Responses**

This summary of comments and responses contains the following sections:

- A. Summary of General Support
- B. Summary of Specific Comments
  1. Application of Rules to disgorged amounts received under settlement agreements
  2. Handling of disgorged funds and interest
  3. Application of payments received where disgorgement and administrative penalties have been ordered against a respondent
  4. Exception to the requirement to distribute for small amounts
  5. Use of court-appointed administrators
  6. Notice of claims process
  7. Claims process for rules-based distributions carried out by the OSC
  8. OSC’s use of other sanction and settlement funds
  9. Investor resources and forms
  10. Manner of payments to approved applicants
  11. Publication, periodic reviews and reporting
  12. Placement of the distribution function within the OSC
- C. Summary of Out-of-Scope Comments

## **A. Summary of General Support**

Overall, all commenters expressed support for the proposal to modernize the framework for making disgorged funds available for distribution to harmed investors and commended the Commission for developing and implementing the framework in Ontario.

### **OSC Response**

We thank the commenters for their support.

## **B. Summary of Specific Comments**

### **1. Application of Rules to disgorged amounts received under settlement agreements**

One commenter noted that it is not clear whether the definition of “disgorgement order” includes disgorgement orders that are made as part of approved settlement agreements.

### **OSC Response**

The definition of “disgorgement order” in the Rules includes orders made by the Tribunal under paragraph 10 of subsection 127 (1) of the *Securities Act* or paragraph 10 of subsection 60 (1) of the *Commodity Futures Act*. This would capture any such order made by the Capital Markets Tribunal (Tribunal) in the context of approving a settlement agreement.

### **2. Handling of disgorged funds and interest**

One commenter suggested that disgorged funds should be labelled for easy identification and should accrue interest with interest payable to harmed investors.

### **OSC Response**

Funds received under disgorgement orders issued on or after the coming into force of the new distribution framework will be held in a separate interest-bearing account. Interest attributable to amounts received under a particular disgorgement order will be included for distribution with the disgorged amounts.

### **3. Application of payments received where disgorgement and administrative penalties have been ordered against a respondent**

One commenter noted that, in cases where the Tribunal has ordered an administrative penalty and disgorgement, and the OSC receives a payment towards the administrative penalty, OSC staff should consider the payment of the administrative penalty as disgorgement and return the funds to harmed investors.

### **OSC Response**

We agree with the substance of this comment. If the Tribunal has ordered an administrative penalty, disgorgement and/or costs against a respondent, the Commission’s practice is to apply any amount received in respect of the orders first to amounts owing under the disgorgement order.

### **4. Exception to the requirement to distribute for small amounts**

Two commenters suggested that the OSC should establish guidelines setting out how it will determine that a distribution is not required because the amount received is too small to justify the costs of a distribution. One commenter suggested that the OSC should publish a notice along with reasons for not conducting a distribution, provide notice to otherwise eligible applicants and publish the minimum threshold (set at a high level) on the website. Another commenter suggested disclosing each decision, together with reasons, on the OSC website and annual reports.

### **OSC Response**

Consistent with the *Civil Remedies Act, 2021* and SEC distribution frameworks, subsection 2 (1) of the Rules provide that the Commission may decline to proceed with a distribution in a given case if, in its opinion, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants.

We have revised the wording in subsections 2 (2) through (4) of the Rules by removing the reference to a “threshold for distribution.” The purpose of this revision is to clarify the intention that the factors described in subsection 2 (1) of the Rules will be applied to the particular facts of the case in determining whether to proceed with a distribution of amounts received rather than applying a specific monetary threshold. Although the Commission has not established a minimum threshold amount that must be

received before a distribution will be commenced, in general, it is anticipated that the Commission would not proceed with a distribution if the estimated costs of the distribution would exceed the amount available for distribution.

As part of the OSC's distribution framework, the OSC website will include a dedicated page relating to distributions that will be updated on a quarterly basis to reflect amounts received under each disgorgement order as well as the status of any distributions of disgorged amounts. If a determination is made not to proceed with a distribution of amounts received by the OSC in a given case based on the above factors, this determination will be reflected on the OSC's website. However, to ensure that OSC resources allocated to the distribution program are efficiently used and appropriately focused on carrying out distributions that are feasible, direct notice of amounts that are considered too small to distribute will not be provided to the potential class of otherwise eligible applicants, as there would be costs associated with identifying any such persons and companies and delivering notice to them. We are not aware of any such requirement to provide either direct or general notice of amounts considered too small to distribute under the other similar distribution frameworks noted above.

## **5. Use of court-appointed administrators**

Two commenters suggested using court-appointed administrators only when necessary given cost considerations. One commenter noted that it is unclear why the OSC would take a different approach to that of the British Columbia Securities Commission that carries out most distributions in-house. The commenter further suggested establishing clear criteria for seeking the appointment of an administrator, creating a request for proposal/fee quotes process to select administrators and ensuring accountability from administrators through regular, detailed reporting.

### **OSC Response**

Based on a review of historical data, building and resourcing a significant, fixed internal claims administration capacity with the necessary infrastructure and specialized expertise that could handle distribution files of varied scale and complexity is not practical at this time.

As noted in the Commission's Regulatory Impact Analysis published on July 11, 2024, a review of the 10-year data of cases where disgorgement was ordered by the Tribunal and received by the Commission reflects that there could be an average of approximately two distributions per year, with the number of distributions in any given year ranging from zero to seven. This suggests that a significant fixed internal claims administration capacity, if established, would not be an efficient use of resources, as these resources could go unused in some years and may be insufficient to deliver timely distributions in other years.

Accordingly, the Commission has adopted an approach that will rely primarily on the specialized expertise and resources of third-party court-appointed administrators to carry out distributions. As set out in the Companion Policies, distributions will generally be carried out directly by the Commission only where the Commission is satisfied that the potential pool of applicants can be readily identified and are small in number and their financial losses can be readily quantified. The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution, as the specialized expertise of a third-party administrator may be necessary to address issues associated with distributing funds to recipients outside of Canada.

Vendors retained by the Commission to perform claims administration services are selected on a competitive basis following the OSC's procurement policies. Once appointed to carry out a distribution, the administrator is subject to the oversight of the court, including any specific reporting obligations that may be imposed by the court relating to costs.

## **6. Notice of claims process**

Six commenters suggested broader dissemination of claims notices to ensure that investors are made aware of the claims process. Commenters noted that investors may not be aware of or check the OSC's website regularly and as a result, may not participate in the claims process. Specifically:

- two commenters suggested including a requirement in the Rules to provide direct notice to known applicants, if available;
- one commenter suggested including a requirement for the OSC and/or administrator to make reasonable efforts to ascertain the last known addresses of harmed investors;
- one commenter suggested strengthening the Rules by including a requirement to publish a press release and disseminate the notice through social media channels in every case. Other commenters suggested using different communications channels such as the OSC's email alerts, newspapers, billboards, radio or television broadcasts;
- one commenter suggested that notices and press releases should be translated, if needed and should be designed to reach remote communities;



- some commenters agreed that the OSC should work with investor advocacy organizations to amplify the notice and suggested other organizations such as legal clinics and through education and outreach initiatives;
- one commenter recommended that where a respondent is registered under the *Securities Act*, the registrant be required to inform all known investors of the disgorgement order. Where the respondent is no longer registered under the *Securities Act*, the Commission should use its investigative powers under section 11 to inquire into the affairs of the person or company and provide direct notice to all known investors of the disgorgement order and claims process.

### **OSC Response**

We agree that the Commission should consider using various channels to provide notice to investors based on the facts of the case.

The Rules require that where a distribution is required, notice of the claims process must be posted on the Commission's website and must set out the period within which an eligible applicant may apply. We have revised the Rules to include a requirement for the Commission to also issue a press release when the notice of claims process is posted on the OSC's website. These requirements apply to distributions carried out directly by the OSC using the rules-based process and to distributions carried out by a court-appointed administrator. Further, as set out in the Companion Policies, the Commission may amplify the website posting through additional channels such as social media channels and investor advocacy organizations.

In addition, we have revised the Companion Policies to add a reference to an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. Investors will also be able to update their contact information if it changes.

Where the distribution is being carried out directly by the Commission, the Commission will attempt to send the notice to the last known address (including electronic address), if available, of any known potential eligible applicants who inputted their information into this system.

Where the distribution is being carried out by a court-appointed administrator, additional notice requirements, such as a requirement to attempt to directly notify any known potential eligible applicants or post the distribution notice in one or more newspapers or other venues, may be specified in the claims process order made by the court.

All investors affected by the misconduct found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

We also agree with the comment that, in some cases, it may be appropriate to translate notices to reach different linguistic communities. The Commission has followed this practice in past distributions of disgorged funds. For example, in one distribution of disgorged funds, which was carried out by a court-appointed receiver, most of the harmed investors identified in the course of the Commission's investigation resided in several Middle Eastern countries. The receiver's notice and claims forms were translated into Arabic in this case.<sup>1</sup> In addition, the Commission engaged the assistance of securities regulators in these countries to post the receiver's notice on their websites. In another distribution of disgorged funds, which was carried out by the Ministry of the Attorney General (MAG) using the distribution framework under the *Civil Remedies Act, 2001*, the Commission obtained an order from the Tribunal to permit the sharing of information with MAG to facilitate MAG providing notice of the claims process relating to the disgorged funds through the same Hindi language radio station through which harmed investors had been solicited to invest.<sup>2</sup>

## **7. Claims process for Rules-based distributions carried out by the OSC**

### **a. Use of confirmation of claims process**

Three commenters suggested using a simplified confirmation of claims process when the OSC has information about harmed investors. One commenter suggested that in a situation where both the OSC and the investor do not have sufficient information to substantiate the claim, the OSC should consider whether this requirement could or should be waived in exceptional circumstances.

### **OSC Response**

To ensure fairness across all applicants, claims must be substantiated by evidence. However, to make the process easy for investors, we agree that the Commission should use a simplified confirmation of claims process where possible. As noted in the Companion Policies, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement

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<sup>1</sup> [Receiver appointed by Ontario Superior Court of Justice: Distribution of proceeds recovered by the OSC to GITC investors](https://www.capitalmarketstribunal.ca/en/proceedings/welcome-place-inc-re-1/reasons-and-decision-matter-welcome-place-inc-et-al)

<sup>2</sup> <https://www.capitalmarketstribunal.ca/en/proceedings/welcome-place-inc-re-1/reasons-and-decision-matter-welcome-place-inc-et-al>

order. In these cases, the Commission may conduct a simplified confirmation of claims process, where the claim form invites those investors to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted by the investor,
- decline to make a claim, or
- make a claim for a different amount, supported by the submission of documentation evidencing the different amount claimed by the investor.

**b. Late claims and claims deadline**

One commenter suggested that the Commission should accept claims after the final day for filing a claim in exceptional circumstances such as when an applicant is severely ill, hospitalized or incapacitated. Another commenter suggested that the final day for filing a claim should be no less than 90 days and a minimum of 120 days if direct notice is not provided to the harmed investors.

**OSC Response**

The Rules contemplate that each distribution will have a deadline for filing a claim, which will be specified in the notice of claims process. To provide certainty for both the Commission and applicants, claims filed after the final date for filing a claim will not be considered. In circumstances where an investor is unable to participate in the claims process due to illness or incapacity, the investor's legal representative may file a claim on behalf of the investor. We have revised the Companion Policies to clarify that a legal representative, trustee or executor is considered a "person" under the definition of "eligible applicant" and may therefore submit a claim on behalf of an investor applicant.<sup>3</sup>

The Rules contemplate that applicants will have at least 90 days from the date of the notice to make a claim. However, the Commission may establish a longer claims period depending on the facts of the case. As noted in the Companion Policies, while the minimum period of 90 days may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if potential applicants are from a vulnerable group, are located outside of Canada, or where there is limited or no contact information for certain investors.

**c. Opportunity to be heard**

One commenter suggested including an opportunity to be heard process before denying a claim to allow for a transparent and fair process.

**OSC Response**

In developing the claims process under the Rules, the Commission considered approaches used in different distribution frameworks. Consistent with the Ontario *Civil Remedies Act, 2001* distribution framework, the Rules do not provide applicants with an "opportunity to be heard" before their claim is denied. Instead, under section 11 of the Rules, applicants are afforded an opportunity to file additional supporting documentation before the Commission denies all or part of a claim.<sup>4</sup> This provision is intended to provide an applicant with an opportunity to supply any missing information to the Commission before the Commission makes a final determination about the claim but does not provide the applicant with a right to a hearing. This approach is guided by the goal of ensuring that the process is both fair to individual applicants and remains efficient for all applicants, as payments will not generally be made to approved applicants until all claims have been determined in relation to a particular disgorgement order. To provide certainty to the Commission and applicants regarding the deadline for submitting additional supporting documentation, section 11 of the Rules has been revised to clarify that the applicant has 35 days from the date of the notice informing them of the Commission's intention to deny all or part of their claim to provide any additional supporting documentation that would substantiate their claim.

Under the *Securities Act* and the *Commodity Futures Act*, decisions of the Commission may be varied, revoked or appealed.

**d. Investor supports**

Three commenters suggested the following supports should be provided as part of the claims process:

- accepting claims information by phone in special circumstances;

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<sup>3</sup> The definition of "person" in the *Securities Act* and the *Commodity Futures Act* includes, among other things, a "trust, trustee, executor, administrator, or other legal representative".

<sup>4</sup> The *Civil Remedies Act, 2001* distribution framework does not provide for an opportunity to provide additional supporting documentation before a claim is denied.

- designing a user-friendly system with streamlined navigation, clear instructions, plain language and support options that reduce reliance on costly legal assistance;
- setting up a toll-free helpline that investors can call if they need assistance in completing the forms or have questions about the process.

**OSC Response**

We thank the commenters for their suggestions. We will consider them as we operationalize the statutory framework. The OSC is committed to making the claims process user-friendly and to meeting the needs of persons with disabilities. In addition to developing plain language resources to assist investors, investor applicants will be able to contact OSC distribution staff by email and phone with questions about the claims process or to request accommodations.

**8. OSC's use of other sanctions and settlement funds****a. Pro rata distribution**

One commenter suggested that instead of distributing funds on a pro rata basis where the disgorged amount is insufficient to satisfy the full amount of all approved claims, the Commission could consider supplementing any shortfall from other sanctions and settlement money held by the Commission.

**OSC Response**

The content of the Rules is confined to matters addressed in the legislative framework for distributing amounts received under disgorgement orders. This legislative framework contemplates that other sanctions and settlement money held by the Commission may be used to pay for administrative costs of distributing disgorged amounts instead of deducting these costs from the disgorged amount. This approach will allow for more of the disgorged amounts that are subject to the distribution requirement to go back into the hands of harmed investors.

**b. Administrative costs**

Three commenters made the following comments with respect to minimizing distributions costs and maximizing the amounts to be distributed:

- Establish clear guidelines that define "reasonable costs" including specific criteria for assessing the appropriateness of such expenses;
- Disclose a breakdown of costs incurred, including external advice expenses; develop uniform standard for calculating costs and provide periodic reporting;
- Pay for administrative costs from other fines and settlement payments, other sanction and settlement funds held by the Commission, or accrued interest, without depleting disgorged funds available for distribution.

**OSC Response**

The framework for payment of administrative costs aims to minimize the amount of administrative costs being paid out of the disgorged amount being distributed by allowing for the payment of some or all of these costs from other sanction and settlement funds held by the Commission.

Where the distribution is carried out directly by the Commission in accordance with Part 5 of the Rules, administrative costs that are eligible for payment are confined to the reasonable costs of obtaining external advice relating to the distribution.

Where the distribution is carried out by a court-appointed administrator, administrative costs that are eligible for payment include the reasonable costs incurred by the administrator in carrying out the distribution.

Importantly, steps taken by the court-appointed administrator to distribute the disgorged amount in a given a case will be guided by the claims process order approved by the court. Further, it is anticipated that any costs that are proposed to be paid from the disgorged amount would be subject to the oversight of the court.

It is anticipated that administrative costs will vary across distribution files depending on the facts of the case and will be influenced by factors such as:

- the number and location of applicants,
- any special requirements of the applicants, such as language requirements,

- any specific expertise that may be required to conduct the distribution, such as the development of one or more potential models to quantify losses in a complex case,
- the manner in which notice to potential investors is carried out,
- the volume and complexity of the claims that must be reviewed, and
- whether there are disputed claims.

To promote cost-efficient distributions, where appropriate, the Commission will distribute amounts received under disgorgement orders arising from the same contravention in a single distribution. To reflect this practice, we have added guidance in the Companion Policies relating to subsection 2 (1) of the Rules to clarify that in circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents.

Any administrative costs paid from the disgorged amount will be disclosed in the report to be published for each completed distribution in accordance with the requirements set out in section 16 of the Rules.

#### **c. Undistributed amounts**

One commenter suggested that the OSC be required to allocate undistributed disgorged amounts towards the payment of administrative costs of future distributions or other investor protection initiatives. Another commenter suggested that undistributed amounts should be held together with other sanction and settlement funds and not used to subsidize OSC operations.

#### **OSC Response**

The legislation requires the OSC to deal with undistributed amounts in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the SCA). Accordingly, undistributed amounts will be held together with other sanctions and settlement funds and these funds may then be allocated for potential use in accordance with subsection 19 (2) of the SCA.

In addition to current purposes for which funds may be allocated, when the new distribution framework comes into force, subsection 19 (2) of the SCA will contain a new subclause that will also allow the Commission to allocate these funds:

“for use to pay administrative costs in relation to the distribution of disgorged amounts....”

Currently, subsection 19 (2) allows the Commission to allocate the funds:

- (i) to or for the benefit of third parties,
- (ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, or
- (iii) for any other purpose specified in the regulations.

The regulations<sup>5</sup> specify that the Commission may allocate money under subsection 19 (2) of the SCA for the following additional purposes:

- For use by the Commission to enhance its capabilities in information technology, data acquisition and data analytics in order to address regulatory matters relating to investor protection, the reduction of systemic risk or the integrity of the capital markets. For example, the enhancements may consist of the development, purchase, installation or deployment of software or hardware or the implementation of special projects relating to data integration, risk modelling or cyber security.  
  
Ongoing operating costs of the Commission are not included in this purpose.
- For use by the Commission to fund activities of the Commission's Office of Economic Growth and Innovation that are aimed at fostering innovation, capital formation and competition in Ontario's capital markets.

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<sup>5</sup> Ontario Regulation 28/24.

**9. Investor resources and forms****a. Plain language materials**

Two commenters supported the OSC's commitment to developing plain language resources to assist investors to better understand the new statutory distribution framework and process to apply for payments. Commenters also suggested using plain language to draft notices and other communications and instructions to submit claims. One commenter emphasized the need to publish educational materials to educate investors about the process in order to manage expectations.

**b. Guidance on eligibility criteria**

One commenter suggested that clear guidance is needed on the eligibility criteria particularly the difference between lost opportunity damages and direct financial losses, and how losses will be assessed. Another commenter suggested explaining these concepts through educational materials.

**c. Updates to claims application**

One commenter suggested explaining in the claim form in clear, plain language with examples what constitutes a material change and when investors should report a material change.

**d. Claim denial**

One commenter suggested that the claim form should clearly explain the claim denial process.

**e. Simplified website navigation**

One commenter suggested simplifying website navigation so that investors can easily locate the information relating to distributions.

**OSC Response**

We thank the commenters for their comments and suggestions and will consider them as we develop the investor resources and forms and related website functionality.

**10. Manner of payments to approved applicants**

One commenter suggested making payments to investors by cheque or electronic transfer.

**OSC Response**

Payments will generally be deposited directly into the approved applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While cheques may be issued in exceptional circumstances, if a cheque is not cashed after 180 days following its issuance, in accordance with section 13 of the Rules, the funds belong to the Commission and must be dealt with in accordance with subsection 19 (2) of the SCA. The Companion Policies contemplate that the Commission will undertake reasonable efforts to contact payees who have not cashed a cheque within 90 days.

**11. Publication, Periodic Reviews and Reporting**

Four commenters suggested that the OSC report on:

- respondents who have failed to pay disgorgement orders together with information about collections and distributions,
- information about cases where collections efforts are unsuccessful, including reasons,
- the methodology used to carry out distributions,
- information about how the statutory framework is working, including challenges and successes,
- information on program outcomes, similar to the U.K. Financial Conduct Authority's reporting.

One commenter recommended that notices of collection and distributions across all Canadian securities regulators be aggregated and published on a centralized website.

Another commenter suggested that the OSC conduct periodic reviews of completed claims processes to determine if costs should be funded from disgorged amounts or whether other sources of income should be allocated to pay for distribution costs.

**OSC Response**

We thank the commenters for their comments and suggestions.

Once the new distribution framework is in place, a dedicated area of the OSC's website will house information relating to the new distribution framework. This section will identify matters where disgorgement has been ordered, amounts received under those orders and amounts that remain unpaid.<sup>6</sup> This section will also include investor resources, notices of any active distributions and reporting on completed distributions. Under section 16 of the Rules, the OSC is required to report on each completed distribution no later than 60 days after the funds have been fully distributed.

The OSC will also monitor the implementation of the new distribution program and consider how to increase transparency around the program's outcomes.

**12. Placement of the distribution function within the OSC**

One commenter suggested that the collections of unpaid monetary sanctions and distribution of disgorged funds should be carried out by staff organizationally independent of enforcement. Another commenter noted that in 2020, the U.S. Securities & Exchange Commission created a dedicated Office of Bankruptcy, Collections, Distributions, and Receiverships in the Division of Enforcement and suggested that the OSC consider taking a similar approach.

**OSC Response**

We thank the commenters for their comments and suggestions and will consider them as we operationalize the distribution framework.

**C. Summary of Out of Scope Comments**

We received some comments on topics that are outside the scope of this rulemaking initiative, including:

- defining "ill-gotten gains"
- improving collections, including through legislative amendments
- publishing a methodology for calculating disgorgement
- prioritizing investor compensation over fines in enforcement proceedings
- extending the distribution framework to include administrative penalties
- sponsoring a securities class actions database
- giving binding authority to the Ombudsman for Banking Services and Investments

**OSC Response**

We note the comments but have not provided specific responses to comments outside the scope of this rulemaking initiative.

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<sup>6</sup> In addition, the OSC separately maintains on its website a list of individuals or companies with unpaid administrative penalties, disgorgement orders and costs, which is updated on a quarterly basis: <https://www.osc.ca/en/enforcement/osc-sanctions/individuals-or-companies-unpaid-osc-sanctions>

**ANNEX B**

**OSC RULE 11-502  
DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS**

**PART 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

**1. In this Rule:**

“administrator” means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 128.1 (4) of the *Securities Act*;

“approved claim amount” means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

“disgorgement order” means an order made under paragraph 10 of subsection 127 (1) or paragraph 15 of subsection 128 (3) of the *Securities Act*;

“eligible applicant” means a person or company that

- (a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and
- (b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

**PART 2  
REQUIREMENT TO DISTRIBUTE**

**Circumstances where a distribution is required**

**2. (1)** The distribution requirement in subsection 128.1 (2) of the *Securities Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

- (a) the money has been received under a disgorgement order arising from a contravention of section 76 of the *Securities Act*;
- (b) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;
- (c) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

**(2)** In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

**(3)** The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to justify making a distribution.

**(4)** Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to justify making a distribution and if:

- (a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or
- (b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) occurs on the later of

- (a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and
- (b) the exhaustion of the appeal process if an appeal is filed.

### **PART 3**

#### **PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

##### **Publication of money received under disgorgement orders**

3. (1) If the Commission receives money under a disgorgement order, other than a disgorgement order arising from a contravention of section 76 of the *Securities Act*, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

##### **Publication of notice of claims process**

4. (1) If a distribution of money is required under this Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

- (a) if there is an administrator, a claims process order made by the court;
- (b) if there is no administrator, Part 5 of this Rule.

### **PART 4**

#### **REQUIREMENT TO UPDATE CLAIMS APPLICATION**

##### **Requirement to update claims application**

5. If a person or company has made an application for a payment as described in subsection 128.1 (3) of the *Securities Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

##### **Claim denial – misleading or untrue information**

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

- (a) the person or company fails to comply with section 5;
- (b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### **PART 5**

#### **CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

##### **Application**

7. This Part applies if there is no administrator.

##### **Content of the notice of claims process**

8. If there is no administrator, the notice described in section 4 must include all of the following information:

- (a) the proceeding in which the disgorgement order was made;
- (b) the amount of money received under the disgorgement order;
- (c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;



- (d) a description of how an eligible applicant can make a claim;
- (e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);
- (f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;
- (g) an address, including an electronic address, where claims should be filed;
- (h) a statement that a claim that does not comply with this Rule will be denied;
- (i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 128.1(4) of the *Securities Act*;
- (j) any other information that the Commission considers appropriate.

**Claim requirements**

**9. (1)** An applicant must use a claim form provided by the Commission.

**(2)** Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

**(3)** The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

**(4)** The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

**Determining eligibility and amount of payment**

**10. (1)** After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

- (a) the applicant is an eligible applicant in respect of the disgorgement order;
- (b) the amount of the applicant's direct financial loss can be quantified;
- (c) sufficient proof of the direct financial loss has been provided.

**(2)** When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

- (a) the amount of money received under the disgorgement order;
- (b) the direct financial loss suffered by the eligible applicant;
- (c) the direct financial losses suffered by all eligible applicants;
- (d) any other information the Commission considers appropriate in the circumstances.

**(3)** When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- (a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- (b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

**(4)** The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

**Opportunity to provide additional supporting documentation**

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 35 days from the date of the notice.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address provided in the applicant's claim form.

**No payment until all claims are determined**

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back the disputed claim amount and make payments, including partial payments, to the remaining eligible applicants.

**Residual funds**

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 128.1 (14) of the *Securities Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

**Election to seek appointment of administrator following final day for filing a claim**

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of section 8, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

## **PART 6 ADMINISTRATIVE COSTS**

**Payment of administrative costs**

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 128.1 (9) and (12) of the *Securities Act*:

- (a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;
- (b) reasonable costs incurred by an administrator in connection with court orders made under section 128.1 of the *Securities Act*;
- (c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 128.1 (9) or (12) of the *Securities Act* must be made as follows:

- (a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;
- (b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

- (c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

**(3)** In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

- (a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;
- (b) the amount of any payment already made under paragraph (a) of subsection (2);
- (c) the value of the disgorged amount that is the subject of the distribution;
- (d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount or the value of the approved claim amount.

## **PART 7 REPORTING**

### **Reporting**

**16. (1)** The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

**(2)** The report under subsection (1) must contain all of the following information:

- (a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;
- (b) the method of distribution;
- (c) the estimated or total number of harmed investors, if known;
- (d) the total number of applicants;
- (e) the total number of eligible applicants who received a payment;
- (f) the total value of all approved claims;
- (g) the total amount distributed to eligible applicants;
- (h) the value of any administrative costs paid from the disgorged amount;
- (i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

## **PART 8 EFFECTIVE DATE**

### **Effective Date**

**17.** This Rule comes into force on the later of the following:

- (a) August 26, 2025;
- (b) the day on which sections 8, 9 and subsections 11 (2) and (5) of Schedule 10 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX C

~~PROPOSED~~ OSC RULE 11-502  
***DISTRIBUTION OF AMOUNTS PAID TO RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS***

**PART 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

1. In this ~~Instrument~~Rule:

“administrator” means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 128.1 (4) of the *Securities Act*,

“approved claim amount” means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

“disgorgement order” means an order made under paragraph 10 of subsection 127 (1) or paragraph 15 of subsection 128 (3) of the *Securities Act*,

“eligible applicant” means a person or company that

- (a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and
- (b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

**PART 2  
REQUIREMENT TO DISTRIBUTE**

**Circumstances where a distribution is required**

2. (1) The distribution requirement in subsection 128.1 (2) of the *Securities Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

- (a) the money has been received under a disgorgement order arising from a contravention of section 76 of the *Securities Act*,
- (b) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;
- (c) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants until the earlier of for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

- (a) ~~3 years from the date of the final disposition of the disgorgement order, and~~
- (b) ~~the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in paragraph (b) of subsection (1).~~

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to satisfy the threshold for justify making a distribution ~~described in paragraph (b) of subsection (1).~~

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to satisfy the threshold for justify making a distribution ~~described in paragraph (b) of subsection (1)~~ and if:

- (a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

- (b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the [decision that gave rise to the](#) disgorgement order described in subsections (1), (2) and (3) [begins occurs](#) on the later of

- (a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and
- (b) the exhaustion of the appeal process if an appeal is filed.

### **PART 3**

#### **PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

##### **Publication of money received under disgorgement orders**

3. (1) If the Commission receives money under a disgorgement order, other than a disgorgement order arising from a contravention of section 76 of the *Securities Act*, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

##### **Publication of notice of claims process**

4. (1) If a distribution of money is required under this [InstrumentRule](#), notice of the claims process must be posted on the Commission's website [accompanied by a press release](#) and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

- (a) if there is an administrator, a claims process order made by the court;
- (b) if there is no administrator, Part 5 of this [InstrumentRule](#).

### **PART 4**

#### **REQUIREMENT TO UPDATE CLAIMS APPLICATION**

##### **Requirement to update claims application**

5. If a person or company has made an application for a payment as described in subsection 128.1 (3) of the *Securities Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

##### **Claim denial – misleading or untrue information**

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

- (a) the person or company fails to comply with section 5;
- (b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### **PART 5**

#### **CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

##### **Application**

7. This Part applies if there is no administrator.

##### **Content of the notice of claims process**

8. (4) If there is no administrator, the notice described in section 4 must include all of the following information:

- (a) the proceeding [underin](#) which the disgorgement order was made;

- (b) the amount of money received under the disgorgement order;
- (c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;
- (d) a description of how an eligible applicant can make a claim;
- (e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);
- (f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;
- (g) an address, including an electronic address, where claims should be filed;
- (h) a statement that a claim that does not comply with this [InstrumentRule](#) will be denied;
- (i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this [InstrumentRule](#), in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 128.1(4) of the *Securities Act*;
- (j) any other information that the Commission considers appropriate.

**Claim requirements**

**9. (1)** An applicant must use a claim form provided by the Commission.

**(2)** Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

**(3)** The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

**(4)** The claim must be filed on or before the final day for filing [a claim](#) and must be updated in accordance with section 5.

**Determining eligibility and amount of payment**

**10. (1)** After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

- (a) the applicant is an eligible applicant in respect of the disgorgement order;
- (b) the amount of the applicant's direct financial loss can be quantified;
- (c) sufficient proof of the direct financial loss has been provided.

**(2)** When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

- (a) the amount of money received under the disgorgement order;
- (b) the direct financial loss suffered by the eligible applicant;
- (c) the direct financial losses suffered by all eligible applicants;
- (d) any other information the Commission considers appropriate in the circumstances.

**(3)** When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- (a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- (b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

#### **Opportunity to provide additional supporting documentation**

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within ~~30~~35 days from the date ~~of~~ the notice ~~was delivered~~.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address, provided in the applicant's claim form.

~~(3) The notice in subsection (1) is deemed to have been delivered~~

~~(a) — by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and~~

~~electronically or digitally, on the day of delivery.~~

#### **No payment until all claims are determined**

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount and make payments, including partial ~~installment~~ payments, to the remaining eligible applicants.

#### **Residual funds**

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 128.1 (14) of the *Securities Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

#### **Election to seek appointment of administrator following final day for filing a claim**

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of ~~subsection 8-(4)~~, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

### **PART 6 ADMINISTRATIVE COSTS**

#### **Payment of administrative costs**

15. (1) In this section:

“administrative costs” include any of the following costs referred to in subsections 128.1 (9) and (12) of the *Securities Act*:

- (a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;
- (b) reasonable costs incurred by an administrator in connection with court orders made under section 128.1 of the *Securities Act*;
- (c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this ~~Instrument~~Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 128.1 (9) or (12) of the *Securities Act* must be made as follows:

- (a) first, from any administrative penalty or settlement money received by the Commission in relation to the same ~~proceedings~~proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such ~~administrative penalty or settlement~~ money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;
- (b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);
- (c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

- (a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;
- (b) the amount of any payment already made under paragraph (a) of subsection (2);
- (c) the value of the disgorged amount that is the subject of the distribution;
- (d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount; or the value of the approved claim ~~amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that~~ amount.

## **PART 7 REPORTING**

### **Reporting**

**16. (1)** The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

- (a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;
- (b) the method of distribution;
- (c) the estimated or total number of harmed investors, if known;
- (d) the total number of applicants;
- (e) the total number of eligible applicants who received a payment;
- (f) the total value of all approved claims;
- (g) the total amount distributed to eligible applicants;
- (h) the value of any administrative costs paid from the disgorged amount;
- (i) the percentage of each eligible applicant's approved claim amount paid under the distribution.



PART 8  
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

- (a) August 26, 2025;
- (b) the day on which sections 8, 9 and subsections 11 (2) and (5) of Schedule 10 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

ANNEX D

COMPANION POLICY 11-502  
*DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER  
DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS*

PART 1  
GENERAL COMMENTS

**Purpose of this Companion Policy**

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-502 *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Securities Act* (Ontario) (the **OSA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario securities law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the OSA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 128.1 of the OSA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

**Background**

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets and confidence in capital markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario securities law.

When a person or company is alleged to have contravened Ontario securities law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario securities law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.<sup>i</sup> The Commission, exercising its discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The purpose of a disgorgement order is not to compensate investors. Instead, disgorgement orders have been made to prevent a wrong-doer from benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the OSA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.<sup>ii</sup>

The OSA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.<sup>iii</sup>

The distribution process set out in the OSA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on “who lost what”. Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant’s responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

### **Method of Distribution**

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

### **Section 1 - Definitions**

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

#### ***Definition of Eligible Applicant***

##### *Persons or companies*

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as eligible applicants. The definition of an eligible applicant includes any person<sup>iv</sup> or company<sup>v</sup> that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of “person”<sup>vi</sup> in the OSA includes, among other things, a “trust, trustee, executor, administrator, or other legal representative.” In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

##### *Direct financial losses*

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a “direct financial loss” may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.
- in other cases, an investor’s “direct financial loss” could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent’s contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

## **PART 2 REQUIREMENT TO DISTRIBUTE**

### **Subsection 2 (1) - Circumstances where a distribution is required**

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the disgorgement was ordered in relation to a contravention of the prohibition against “insider trading and tipping” under section 76 of the OSA;
- the amount received is too small to justify the costs of distributing it;
- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within the first two exceptions will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.<sup>vii</sup> The third exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

### **Subsections 2 (2) to (5) - Partial amounts received**

The Commission’s approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and
- the time that has passed from either the date the disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario securities law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

### **PART 3**

#### **PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

#### **Section 3 - Publication of money received under disgorgement orders**

Except in the case of money received in relation to the insider trading and tipping prohibitions under section 76 of the OSA, for each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and

- any other information the Commission considers appropriate.

#### **Section 4 - Publication of notice of claims process**

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through social media channels and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

### **PART 4 REQUIREMENT TO UPDATE CLAIMS APPLICATION**

#### **Sections 5 and 6 - Requirement to update claims application**

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### **PART 5 CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

#### **Section 7 – Application**

Part 5 of the Rule applies if there is no administrator.

#### **Section 8 - Content of the notice of claims process**

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

**Section 9 - Claim requirements**

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

**Section 10 - Determining eligibility and amount of payment*****Subsections 10 (1) to (3) - Claim Determinations***

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

#### ***Subsection 10 (4) - Prorated payments***

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

#### ***Subsection 10 (5) - Exception***

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than \$50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

#### **Section 11 - Opportunity to provide additional supporting documentation**

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 35 days from the date of the notice to file the additional supporting documentation.

#### **Section 12 – No payment until all claims are determined**

Subsection 12 (1) of the Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial payments, to the remaining eligible applicants. In these cases, the Commission will hold back the disputed claim amount.

#### **Section 13 - Residual funds**

Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA<sup>viii</sup>. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.<sup>ix</sup>

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While



cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not cashed their cheques within 90 days following the issuance of the cheque.

#### **Section 14 - Election to seek appointment of administrator following final day for filing a claim**

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

### **PART 6 ADMINISTRATIVE COSTS**

#### **Section 15 - Payment of administrative costs**

The OSA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,<sup>x</sup> or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution<sup>xi</sup>.

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

- (1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.
- (2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:
  - the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
  - the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
  - the value of the disgorged amount that is the subject of the distribution, and

- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount.
- (3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

## **PART 7 REPORTING**

### **Section 16 - Reporting**

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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i The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law is found in paragraph 10 of subsection 127 (1) of the OSA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law is found in paragraph 15 of subsection 128 (3) of the OSA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 122 of the OSA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

- ii The legislative framework for distributing money disgorged to the Commission is found in section 128.1 of the OSA.
- iii Subsections 128.1 (4) and (10) of the OSA set out the two methods of distribution.
- iv Under the OSA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".
- v Under the OSA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".
- vi Please refer to endnote iv.
- vii Subsection 128.1 (15) of the OSA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.
- Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:
- (i) to or for the benefit of third parties,
  - (ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
  - (iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the OSA, or
  - (iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.
- viii Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.
- ix See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.
- x Subsection 128.1 (9) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.
- xi Subsection 128.1 (12) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

## ANNEX E

### **PROPOSED COMPANION POLICY 11-502** **DISTRIBUTION OF AMOUNTS ~~PAID TO~~ RECEIVED BY THE OSC UNDER** **DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS**

#### **PART 1** **GENERAL COMMENTS**

##### **Purpose of this Companion Policy**

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-502 *Distribution of Amounts ~~PAID TO~~ RECEIVED BY THE OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Securities Act* (Ontario) (the **OSA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario securities law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the OSA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 128.1 of the OSA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

##### **Background**

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets and confidence in capital markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario securities law.

When a person or company is alleged to have contravened Ontario securities law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario securities law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.<sup>i</sup> The Commission, exercising its ~~prosecutorial~~ discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The ~~primary~~ purpose of a disgorgement order is not to compensate investors, ~~but, instead, disgorgement orders have been made to prevent a wrong-doer from keeping amounts they obtained as a result of the benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets.~~ Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the OSA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.<sup>ii</sup>

The OSA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.<sup>iii</sup>

The distribution process set out in the OSA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on “who lost what”. Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant’s responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

### **Method of Distribution**

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

### **Section 1 - Definitions**

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

#### ***Definition of Eligible Applicant***

##### *Persons or companies*

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as “eligible applicants”. The definition of an eligible applicant includes any person<sup>iv</sup> or company<sup>v</sup> that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of “person”<sup>vi</sup> in the OSA includes, among other things, a “trust, trustee, executor, administrator, or other legal representative.” In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

##### *Direct financial losses*

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a “direct financial loss” may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor ~~by the respondent or from another source~~). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.
- in other cases, an investor’s “direct financial loss” could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent’s contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

## **PART 2 REQUIREMENT TO DISTRIBUTE**

### **Subsection 2 (1) - Circumstances where a distribution is required**

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the disgorgement was ordered in relation to a contravention of the prohibition against “insider trading and tipping” under section 76 of the OSA;
- the amount received is too small to justify the costs of distributing it~~;~~
- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within ~~these~~the first two exceptions will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.<sup>vii</sup> The third exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

### **Subsections 2 (2) to (5) - Partial amounts received**

The Commission’s approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,

- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and
- the time that has passed from either the date ~~of the final disposition of the disgorgement~~ order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was resolved/exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario securities law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants until the earlier of up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order and the date that if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been resolved/exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that ~~meets the threshold for justifies~~ carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for justify~~ carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for justify~~ carrying out a distribution.

### **PART 3**

#### **PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

#### **Section 3 - Publication of money received under disgorgement orders**

Except in the case of money received in relation to the insider trading and tipping prohibitions under section 76 of the OSA, for each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding ~~underin~~ which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;

- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

#### **Section 4 - Publication of notice of claims process**

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, ~~including accompanied by a press release. This notice will include~~ information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through ~~press releases~~, social media channels, and investor advocacy organizations.

~~As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes.~~ If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will ~~also~~ attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants- ~~who have logged their information on this system.~~

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

### **PART 4 REQUIREMENT TO UPDATE CLAIMS APPLICATION**

#### **Sections 5 and 6 - Requirement to update claims application**

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### **PART 5 CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

#### **Section 7 – Application**

Part 5 of the Rule applies if there is no administrator.

#### **Section 8 - Content of the notice of claims process**

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding ~~underin~~ which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.



If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

### **Section 9 - Claim requirements**

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

### **Section 10 - Determining eligibility and amount of payment**

#### ***Subsections 10 (1) to (3) - Claim Determinations***

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. ~~The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.~~

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;



- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

#### ***Subsection 10 (4) - Prorated payments***

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

#### ***Subsection 10 (5) - Exception***

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than \$50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

#### **Section 11 - Opportunity to provide additional supporting documentation**

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have ~~30~~35 days from the date of the notice ~~was delivered~~ to file the additional supporting documentation.

#### **Section 12 – No payment until all claims are determined**

Subsection 12 (1) of the ~~Proposed~~ Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial installment payments, to the remaining eligible applicants. In these cases, the Commission will hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount.

## Section 13 - Residual funds

### ~~In practice~~

~~Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA<sup>viii</sup>. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.<sup>ix</sup>~~

~~In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.~~

~~To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA\*<sup>x</sup> cashed their cheques within 90 days following the issuance of the cheque.~~

## Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

## PART 6 ADMINISTRATIVE COSTS

## Section 15 - Payment of administrative costs

The OSA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,<sup>xi</sup> or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution<sup>xii</sup>.

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

- (1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

- (2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:
- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
  - the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
  - the value of the disgorged amount that is the subject of the distribution, and
  - the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount ~~if that amount has been determined by the Commission or the administrator.~~
- (3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

## **PART 7 REPORTING**

### **Section 16 - Reporting**

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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<sup>i</sup> The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law is found in paragraph 10 of subsection 127 (1) of the OSA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law is found in paragraph 15 of subsection 128 (3) of the OSA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 122 of the OSA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

<sup>ii</sup> The legislative framework for distributing money disgorged to the Commission is found in section 128.1 of the OSA.

<sup>iii</sup> Subsections 128.1 (4) and (10) of the OSA set out the two methods of distribution.

<sup>iv</sup> Under the OSA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

<sup>v</sup> Under the OSA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

<sup>vi</sup> Please refer to endnote iv.

<sup>vii</sup> Subsection 128.1 (15) of the OSA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

- (i) to or for the benefit of third parties,
- (ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
- (iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the OSA, or
- (iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

<sup>viii</sup> Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

<sup>ix</sup> See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

## B.1: Notices

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- ~~\* Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.~~
- <sup>xi</sup> Subsection 128.1 (9) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.
- <sup>xii</sup> Subsection 128.1 (12) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

**ANNEX F**

**OSC RULE 11-503  
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY  
THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS**

**PART 1  
DEFINITIONS AND INTERPRETATION**

**Definitions**

**1. In this Rule:**

“administrator” means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 60.2.1(4) of the *Commodity Futures Act*;

“approved claim amount” means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

“disgorgement order” means an order made under paragraph 10 of subsection 60 (1) or paragraph 11 of subsection 60.2 (3) of the *Commodity Futures Act*;

“eligible applicant” means a person or company that

- (a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and
- (b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

**PART 2  
REQUIREMENT TO DISTRIBUTE**

**Circumstances where a distribution is required**

**2. (1)** The distribution requirement in subsection 60.2.1 (2) of the *Commodity Futures Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

- (a) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;
- (b) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

**(2)** In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

**(3)** The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to justify making a distribution.

**(4)** Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to justify making a distribution and if:

- (a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or
- (b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

**(5)** The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) occurs on the later of

- (a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and
- (b) the exhaustion of the appeal process if an appeal is filed.

**PART 3**

**PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

**Publication of money received under disgorgement orders**

**3. (1)** If the Commission receives money under a disgorgement order, it must publish the amount of money received under the disgorgement order.

**(2)** Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

**Publication of notice of claims process**

**4. (1)** If a distribution of money is required under this Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

**(2)** An eligible applicant may file a claim by submitting an application in accordance with one of the following:

- (a) if there is an administrator, a claims process order made by the court;
- (b) if there is no administrator, Part 5 of this Rule.

**PART 4**

**REQUIREMENT TO UPDATE CLAIMS APPLICATION**

**Requirement to update claims application**

**5.** If a person or company has made an application for a payment as described in subsection 60.2.1 (3) of the *Commodity Futures Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

**Claim denial – misleading or untrue information**

**6.** The Commission may deny the claim for payment of a person or company if any of the following apply:

- (a) the person or company fails to comply with section 5;
- (b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

**PART 5**

**CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

**Application**

**7.** This Part applies if there is no administrator.

**Content of the notice of claims process**

**8.** If there is no administrator, the notice described in section 4 must include all of the following information:

- (a) the proceeding in which the disgorgement order was made;
- (b) the amount of money received under the disgorgement order;
- (c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;
- (d) a description of how an eligible applicant can make a claim;

- (e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);
- (f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;
- (g) an address, including an electronic address, where claims should be filed;
- (h) a statement that a claim that does not comply with this Rule will be denied;
- (i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 60.2.1 (4) of the *Commodity Futures Act*;
- (j) any other information that the Commission considers appropriate.

**Claim requirements**

**9. (1)** An applicant must use a claim form provided by the Commission.

**(2)** Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

**(3)** The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

**(4)** The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

**Determining eligibility and amount of payment**

**10. (1)** After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

- (a) the applicant is an eligible applicant in respect of the disgorgement order;
- (b) the amount of the applicant's direct financial loss can be quantified;
- (c) sufficient proof of the direct financial loss has been provided.

**(2)** When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

- (a) the amount of money received under the disgorgement order;
- (b) the direct financial loss suffered by the eligible applicant;
- (c) the direct financial losses suffered by all eligible applicants;
- (d) any other information the Commission considers appropriate in the circumstances.

**(3)** When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- (a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- (b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

**(4)** The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

**(5)** Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

### Opportunity to provide additional supporting documentation

**11. (1)** The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 35 days from the date of the notice.

**(2)** The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address provided in the applicant's claim form.

### No payment until all claims are determined

**12. (1)** No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

**(2)** Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back the disputed claim amount and make payments, including partial payments, to the remaining eligible applicants.

### Residual funds

**13.** After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 60.2.1 (14) of the *Commodity Futures Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

### Election to seek appointment of administrator following final day for filing a claim

**14.** Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of section 8, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

## PART 6 ADMINISTRATIVE COSTS

### Payment of administrative costs

**15. (1)** In this section:

"administrative costs" include any of the following costs referred to in subsections 60.2.1 (9) and (12) of the *Commodity Futures Act*:

- (a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;
- (b) reasonable costs incurred by an administrator in connection with court orders made under section 60.2.1 of the *Commodity Futures Act*;
- (c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Rule.

**(2)** The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 60.2.1 (9) or (12) of the *Commodity Futures Act* must be made as follows:

- (a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;
- (b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);
- (c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.



**(3)** In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

- (a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;
- (b) the amount of any payment already made under paragraph (a) of subsection (2);
- (c) the value of the disgorged amount that is the subject of the distribution;
- (d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount or the value of the approved claim amount.

## **PART 7 REPORTING**

### **Reporting**

**16. (1)** The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

**(2)** The report under subsection (1) must contain all of the following information:

- (a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;
- (b) the method of distribution;
- (c) the estimated or total number of harmed investors, if known;
- (d) the total number of applicants;
- (e) the total number of eligible applicants who received a payment;
- (f) the total value of all approved claims;
- (g) the total amount distributed to eligible applicants;
- (h) the value of any administrative costs paid from the disgorged amount;
- (i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

## **PART 8 EFFECTIVE DATE**

### **Effective Date**

**17.** This Rule comes into force on the later of the following:

- (a) August 26, 2025;
- (b) the day on which sections 6, 7 and 10 of Schedule 1 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023* (Ontario) are proclaimed into force.

## ANNEX G

**~~PROPOSED~~ OSC RULE 11-503**  
**(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS ~~PAID TO~~ RECEIVED BY**  
**THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS**

**PART 1**  
**DEFINITIONS AND INTERPRETATION**

**Definitions**

1. In this ~~Instrument~~Rule:

“administrator” means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 60.2.1(4) of the *Commodity Futures Act*;

“approved claim amount” means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

“disgorgement order” means an order made under paragraph 10 of subsection 60 (1) or paragraph 11 of subsection 60.2 (3) of the *Commodity Futures Act*;

“eligible applicant” means a person or company that

- (a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and
- (b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

**PART 2**  
**REQUIREMENT TO DISTRIBUTE**

**Circumstances where a distribution is required**

2. (1) The distribution requirement in subsection 60.2.1 (2) of the *Commodity Futures Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

- (a) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants;
- (b) the decision giving rise to the disgorgement order has not been finally disposed of in accordance with subsection (5).

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants ~~until the earlier of~~ for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if sufficient additional amounts are received to justify making a distribution within that period.

- (a) ~~3 years from the date of the final disposition of the disgorgement order, and~~
- (b) ~~the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in subsection (1).~~

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order, the amount received under the disgorgement order is insufficient to ~~satisfy the threshold for justifying making a distribution described in subsection (1).~~

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to ~~satisfy the threshold for justifying making a distribution described in subsection (1)~~ and if:

- (a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or
- (b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the decision that gave rise to the disgorgement order described in subsections (1), (2) and (3) beginsoccurs on the later of

- (a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and
- (b) the exhaustion of the appeal process if an appeal is filed.

### PART 3

#### PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

##### Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

##### Publication of notice of claims process

4. (1) If a distribution of money is required under this ~~Instrument~~Rule, notice of the claims process must be posted on the Commission's website accompanied by a press release and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

- (a) if there is an administrator, a claims process order made by the court;
- (b) if there is no administrator, Part 5 of this ~~Instrument~~Rule.

### PART 4

#### REQUIREMENT TO UPDATE CLAIMS APPLICATION

##### Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 60.2.1 (3) of the *Commodity Futures Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

##### Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

- (a) the person or company fails to comply with section 5;
- (b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### PART 5

#### CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

##### Application

7. This Part applies if there is no administrator.

##### Content of the notice of claims process

8. ~~(4)~~ If there is no administrator, the notice described in section 4 must include all of the following information:

- (a) the proceeding ~~underin~~ which the disgorgement order was made;
- (b) the amount of money received under the disgorgement order;

- (c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;
- (d) a description of how an eligible applicant can make a claim;
- (e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);
- (f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;
- (g) an address, including an electronic address, where claims should be filed;
- (h) a statement that a claim that does not comply with this ~~Instrument~~Rule will be denied;
- (i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this ~~Instrument~~Rule, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 60.2.1 (4) of the *Commodity Futures Act*;
- (j) any other information that the Commission considers appropriate.

**Claim requirements**

**9. (1)** An applicant must use a claim form provided by the Commission.

**(2)** Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

**(3)** The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

**(4)** The claim must be filed on or before the final day for filing a claim and must be updated in accordance with section 5.

**Determining eligibility and amount of payment**

**10. (1)** After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

- (a) the applicant is an eligible applicant in respect of the disgorgement order;
- (b) the amount of the applicant's direct financial loss can be quantified;
- (c) sufficient proof of the direct financial loss has been provided.

**(2)** When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

- (a) the amount of money received under the disgorgement order;
- (b) the direct financial loss suffered by the eligible applicant;
- (c) the direct financial losses suffered by all eligible applicants;
- (d) any other information the Commission considers appropriate in the circumstances.

**(3)** When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- (a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- (b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

**(4)** The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

#### Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within ~~30~~35 days from the date ~~of the notice was delivered~~.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including an electronic address, provided in the applicant's claim form.

~~(3) The notice in subsection (1) is deemed to have been delivered~~

~~(a) — by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and~~

~~electronically or digitally, on the day of delivery.~~

#### No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back ~~a portion of the disgorged amount in respect of the disputed claim amount~~ and make payments, including partial ~~installment~~ payments, to the remaining eligible applicants.

#### Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 60.2.1 (14) of the *Commodity Futures Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

#### Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of ~~subsection 8(4)~~, the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

### PART 6 ADMINISTRATIVE COSTS

#### Payment of administrative costs

15. (1) In this section:

“administrative costs” include any of the following costs referred to in subsections 60.2.1 (9) and (12) of the *Commodity Futures Act*:

- (a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;
- (b) reasonable costs incurred by an administrator in connection with court orders made under section 60.2.1 of the *Commodity Futures Act*;
- (c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this ~~Instrument~~Rule.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 60.2.1 (9) or (12) of the *Commodity Futures Act* must be made as follows:

- (a) first, from any administrative penalty or settlement money received by the Commission in relation to the same ~~proceedings~~proceeding that gave rise to the disgorged amount that is the subject of the distribution, if such

administrative penalty or settlement money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

- (b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);
- (c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

- (a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;
- (b) the amount of any payment already made under paragraph (a) of subsection (2);
- (c) the value of the disgorged amount that is the subject of the distribution;
- (d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount; or the value of the approved claim ~~amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that~~ amount.

## **PART 7 REPORTING**

### **Reporting**

**16. (1)** The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

**(2)** The report under subsection (1) must contain all of the following information:

- (a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;
- (b) the method of distribution;
- (c) the estimated or total number of harmed investors, if known;
- (d) the total number of applicants;
- (e) the total number of eligible applicants who received a payment;
- (f) the total value of all approved claims;
- (g) the total amount distributed to eligible applicants;
- (h) the value of any administrative costs paid from the disgorged amount;
- (i) the percentage of each eligible applicant's approved claim amount paid under the distribution.

PART 8  
EFFECTIVE DATE

Effective Date

17. This Rule comes into force on the later of the following:

- (a) August 26, 2025;
- (b) the day on which sections 6, 7 and 10 of Schedule 1 and section 1 of Schedule 11 of the *Building a Stronger Ontario Together Act (Budget Measures), 2023 (Ontario)* are proclaimed into force.

## ANNEX H

### COMPANION POLICY 11-503 (COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS RECEIVED BY THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS

#### PART 1 GENERAL COMMENTS

##### Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts Received by the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Commodity Futures Act* (Ontario) (the **CFA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario commodity futures law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the CFA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 60.2.1 of the CFA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

##### Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive commodity futures markets and confidence in those markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario commodity futures law.

When a person or company is alleged to have contravened Ontario commodity futures law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario commodity futures law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.<sup>i</sup> The Commission, exercising its discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The purpose of a disgorgement order is not to compensate investors. Instead, disgorgement orders have been made to prevent a wrong-doer from benefitting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the CFA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.<sup>ii</sup>



The CFA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.<sup>iii</sup>

The distribution process set out in the CFA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on “who lost what”. Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant’s responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

### **Method of Distribution**

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

### **Section 1 - Definitions**

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

#### **Definition of Eligible Applicant**

##### *Persons or companies*

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as eligible applicants. The definition of an eligible applicant includes any person<sup>iv</sup> or company<sup>v</sup> that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of “person”<sup>vi</sup> in the CFA includes, among other things, a “trust, trustee, executor, administrator, or other legal representative.” In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

##### *Direct financial losses*

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a “direct financial loss” may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.
- in other cases, an investor’s “direct financial loss” could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent’s contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

## **PART 2 REQUIREMENT TO DISTRIBUTE**

### **Subsection 2 (1) - Circumstances where a distribution is required**

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the amount received is too small to justify the costs of distributing it;
- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within the first exception will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.<sup>vii</sup> The second exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

### **Subsections 2 (2) to (5) - Partial amounts received**

The Commission’s approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,
- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date the disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was exhausted.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario commodity futures law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been exhausted.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

### **PART 3 PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

#### **Section 3 - Publication of money received under disgorgement orders**

For each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

#### **Section 4 - Publication of notice of claims process**

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, accompanied by a press release. This notice will include information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through social media channels and investor advocacy organizations.

As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes. If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants who have logged their information on this system.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

### **PART 4 REQUIREMENT TO UPDATE CLAIMS APPLICATION**

#### **Sections 5 and 6 - Requirement to update claims application**

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### **PART 5 CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR**

#### **Section 7 – Application**

Part 5 of the Rule applies if there is no administrator.

#### **Section 8 - Content of the notice of claims process**

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

**Section 9 - Claim requirements**

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

**Section 10 - Determining eligibility and amount of payment*****Subsections 10 (1) to (3) - Claim Determinations***

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

#### ***Subsection 10 (4) - Prorated payments***

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

#### ***Subsection 10 (5) - Exception***

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than \$50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

#### **Section 11 - Opportunity to provide additional supporting documentation**

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 35 days from the date of the notice to file the additional supporting documentation.

#### **Section 12 – No payment until all claims are determined**

Subsection 12 (1) of the Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial payments, to the remaining eligible applicants. In these cases, the Commission will hold back the disputed claim amount.

#### **Section 13 - Residual funds**

Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA<sup>viii</sup>. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.<sup>ix</sup>

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While

cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not cashed their cheques within 90 days following the issuance of the cheque.

#### **Section 14 - Election to seek appointment of administrator following final day for filing a claim**

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

### **PART 6 ADMINISTRATIVE COSTS**

#### **Section 15 - Payment of administrative costs**

The CFA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,<sup>x</sup> or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution<sup>xi</sup>.

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

- (1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.
- (2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:
  - the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
  - the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
  - the value of the disgorged amount that is the subject of the distribution, and

- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount.
- (3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

## **PART 7 REPORTING**

### **Section 16 - Reporting**

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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i The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario commodity futures law is found in paragraph 10 of subsection 60 (1) of the CFA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law is found in paragraph 11 of subsection 60.2 (3) of the CFA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 55 of the CFA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

- ii The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.
- iii Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.
- iv Under the CFA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".
- v Under the CFA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".
- vi Please refer to endnote iv.
- vii Subsection 60.2.1 (15) of the CFA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.
- Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:
- (i) to or for the benefit of third parties,
  - (ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
  - (iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 60.2.1 (9) or (12) of the CFA, or
  - (iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.
- viii Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.
- ix See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.
- x Subsection 60.2.1 (9) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.
- xi Subsection 60.2.1 (12) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.



## ANNEX I

### **PROPOSED COMPANION POLICY 11-503** **(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS ~~PAID TO RECEIVED BY~~** **THE OSC UNDER DISGORGEMENT ORDERS AND PAYMENT OF RELATED ADMINISTRATIVE COSTS**

#### **PART 1** **GENERAL COMMENTS**

##### **Purpose of this Companion Policy**

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts ~~Paid to Received by~~ the OSC under Disgorgement Orders and Payment of Related Administrative Costs* (the **Rule**) together with related provisions of the *Commodity Futures Act* (Ontario) (the **CFA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario commodity futures law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the CFA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 60.2.1 of the CFA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

##### **Background**

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive commodity futures markets and confidence in those markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario commodity futures law.

When a person or company is alleged to have contravened Ontario commodity futures law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario commodity futures law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.<sup>i</sup> The Commission, exercising its ~~prosecutorial~~ discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The ~~primary~~ purpose of a disgorgement order is not to compensate investors, but, instead, disgorgement orders have been made to prevent a wrong-doer from ~~keeping amounts they obtained as a result of the~~ benefiting from their misconduct, deter the wrong-doer and others from engaging in similar misconduct, and restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the CFA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.<sup>ii</sup>

The CFA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.<sup>iii</sup>

The distribution process set out in the CFA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on “who lost what”. Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant’s responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

### **Method of Distribution**

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

### **Section 1 - Definitions**

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

#### ***Definition of Eligible Applicant***

##### *Persons or companies*

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as “eligible applicants”. The definition of an eligible applicant includes any person<sup>iv</sup> or company<sup>v</sup> that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

The definition of “person”<sup>vi</sup> in the CFA includes, among other things, a “trust, trustee, executor, administrator, or other legal representative.” In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors affected by the misconduct related to the contravention found by the Tribunal who were directly harmed by the misconduct can apply for a payment out of the disgorged funds received by the Commission.

##### *Direct financial losses*

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a “direct financial loss” may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor) by the respondent or from another source. However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.
- in other cases, an investor’s “direct financial loss” could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent’s contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

## **PART 2 REQUIREMENT TO DISTRIBUTE**

### **Subsection 2 (1) - Circumstances where a distribution is required**

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the amount received is too small to justify the costs of distributing it;
- the decision giving rise to the disgorgement order has not been finally disposed of.

Money received by the Commission that fits within ~~this~~the first exception will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.<sup>vii</sup> The second exception is intended to clarify that the distribution requirement will not apply in circumstances where the deadline for filing an appeal of the decision that gave rise to the disgorgement order has not yet expired or an appeal of the decision has been filed and the appeal process is ongoing. In these circumstances, the Commission will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the appeal process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, the Commission will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent or respondents. This approach will be taken by the Commission to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

### **Subsections 2 (2) to (5) - Partial amounts received**

The Commission’s approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,
- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and

- the time that has passed from either the date ~~of the final disposition of the disgorgement order~~ was issued, or if the decision that gave rise to the disgorgement order has been appealed, the date the appeal process was ~~resolved/exhausted~~.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario commodity futures law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants ~~until the earlier of for up to~~ 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order ~~and the date that if~~ the Commission receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been appealed, this 3-year period runs from the date the appeal process has been ~~resolved/exhausted~~.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that ~~meets the threshold for justifies~~ carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for justify~~ carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would ~~satisfy the threshold for justify~~ carrying out a distribution.

### **PART 3**

#### **PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS**

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission on the Commission's website. The second step is the publication of the notice of claims process on the Commission's website and the issuance of a press release.

#### **Section 3 - Publication of money received under disgorgement orders**

For each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding under in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

#### Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, ~~including accompanied by a press release. This notice will include~~ information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through ~~press releases~~, social media channels, and investor advocacy organizations.

~~As part of the Commission's distribution framework, the Commission is creating an online system that will enable investors to log their contact information with the Commission at the time a disgorgement order is issued if they would like to be contacted about a potential future distribution of any funds received by the Commission in relation to that order. The system will also allow investors to update their contact information if it changes.~~ If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will ~~also~~ attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants- ~~who have logged their information on this system.~~

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

### PART 4 REQUIREMENT TO UPDATE CLAIMS APPLICATION

#### Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

### PART 5 CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

#### Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

#### Section 8 - Content of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding ~~underin~~ which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

**Section 9 - Claim requirements**

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
  - the applicant's direct financial losses and the amount claimed;
  - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
  - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
  - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
  - the applicant's involvement in the misconduct, if any;
  - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

**Section 10 - Determining eligibility and amount of payment*****Subsections 10 (1) to (3) - Claim Determinations***

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. ~~The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.~~

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.



When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

#### ***Subsection 10 (4) - Prorated payments***

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

#### ***Subsection 10 (5) - Exception***

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than \$50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

#### **Section 11 - Opportunity to provide additional supporting documentation**

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have ~~30~~35 days from the date of the notice ~~was delivered~~ to file the additional supporting documentation.

#### **Section 12 – No payment until all claims are determined**

Subsection 12 (1) of the ~~Proposed~~ Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make payments, including partial ~~installment~~ payments, to the remaining eligible applicants. In these cases, the Commission will hold back ~~a portion of the disgorged amount in respect of~~ the disputed claim amount.

#### **Section 13 - Residual funds**

~~In practice~~Section 13 of the Rule provides that approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued belong to the Commission and will be dealt with in accordance with subsection 19 (2) of the SCA<sup>viii</sup>. Subsection 19 (2) of the SCA sets out the purposes for which these funds may be used.<sup>ix</sup>

In practice, payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. While

cheques may be issued in exceptional circumstances, if a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

To ensure that eligible applicants have a reasonable opportunity to receive their payments, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA\* cashed their cheques within 90 days following the issuance of the cheque.

#### **Section 14 - Election to seek appointment of administrator following final day for filing a claim**

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

### **PART 6 ADMINISTRATIVE COSTS**

#### **Section 15 - Payment of administrative costs**

The CFA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,<sup>xi</sup> or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution<sup>xii</sup>.

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

- (1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.
- (2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:
  - the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
  - the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution,
  - the value of the disgorged amount that is the subject of the distribution, and



- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount ~~if that amount has been determined by the Commission or the administrator.~~
- (3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

## **PART 7 REPORTING**

### **Section 16 - Reporting**

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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i The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario commodity futures law is found in paragraph 10 of subsection 60 (1) of the CFA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law is found in paragraph 11 of subsection 60.2 (3) of the CFA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 55 of the CFA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

ii The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.

iii Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.

iv Under the CFA, "person" means "an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative".

v Under the CFA, a "company" means "any corporation, incorporated association, incorporated syndicate or other incorporated organization".

vi Please refer to endnote iv.

vii Subsection 60.2.1 (15) of the CFA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

- (i) to or for the benefit of third parties,
- (ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,
- (iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 60.2.1 (9) or (12) of the CFA, or
- (iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

viii Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote vii for information on limits to the use of funds under subsection 19 (2) of the SCA.

ix See endnote vii above for the purposes for which the Commission may use any residual amounts that remain in the Commission's account 180 days after the date payments are issued in a particular distribution.

~~\* Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.~~

xi Subsection 60.2.1 (9) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

xii Subsection 60.2.1 (12) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.