

## 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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<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 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.

<sup>ii</sup> The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.

<sup>iii</sup> Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.

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

<sup>v</sup> Under the CFA, 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 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.

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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.

<sup>viii</sup> 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.

<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.

<sup>x</sup> 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.

<sup>xi</sup> 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.