

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.