

**OSC POLICY 15-601**  
**WHISTLEBLOWER PROGRAM**

**PART 1 – PURPOSE AND INTERPRETATION**

**Purpose**

The Ontario Securities Commission (the Commission) has adopted OSC Policy 15-601 *Whistleblower Program* (the Policy) to describe

- the Whistleblower Program (the Program) that has been adopted by the Commission;
- the practices generally followed by the Commission and by Staff of the Commission (Commission Staff) in administering the Program in accordance with the requirements of Ontario securities law;
- the nature of the information that may be eligible for the payment of a financial incentive (whistleblower award) and the criteria that would make an individual eligible for a whistleblower award; and
- the factors considered by: (i) Commission Staff in recommending that a whistleblower be eligible for the payment of a whistleblower award and the amount of a whistleblower award; and (ii) the Commission in determining a whistleblower's eligibility and the amount of the whistleblower award.

The Commission has adopted the Program to encourage individuals to report information on serious securities- or derivatives-related misconduct to the Commission or, where appropriate in the circumstances, through an internal compliance and reporting mechanism. The Commission believes that the Program may assist in preventing or limiting harm to investors that may result from such misconduct.

The Program is established in furtherance of the Commission's mandate to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. It is also in keeping with the principle that effective and responsive securities regulation requires timely, open and efficient administration and enforcement of the Ontario *Securities Act*, RSO 1990 c S5, as amended (the Act) by the Commission.

Under the Program, individuals who meet certain eligibility criteria and who voluntarily submit information to Commission Staff regarding a breach of Ontario securities law may be eligible for a whistleblower award if it is determined that the information submitted was of meaningful assistance to Commission Staff in investigating the matter and obtaining a decision of the Commission that results in an order imposing monetary sanctions and/or the making of a voluntary payment of \$1,000,000 or more.

## Definitions

### 1. In this Policy

“award eligible outcome” means a Commission order made under section 127 of the Act or section 60 of the *Commodity Futures Act* (Ontario) RSO 1990, c C 20, as amended (the CFA), including without limitation an order made in connection with the approval of a settlement, that results in the imposition of total monetary sanctions against, and/or the making of voluntary payments by, one or more respondents in an amount of \$1,000,000 or more and the later of the following has occurred:

- (a) the appeal period in section 9 of the Act or section 5 of the CFA has expired; or
- (b) the right to appeal the Commission’s decision has been exhausted;

“information that has been voluntarily submitted” means:

- (a) information that the whistleblower provided to the Commission before a request, inquiry or summons related to the subject matter of the information provided, was directed at the whistleblower or anyone representing the whistleblower, by the Commission, another securities regulator, an SRO, or a law enforcement agency;
- (b) information that the whistleblower voluntarily provided to another securities regulator, a securities-related SRO or a law enforcement agency, before receiving a request, inquiry or summons from the Commission; and
- (c) excludes information:
  - (i) provided in response to a request, inquiry or summons by the Commission, another securities regulatory authority, an SRO or a law enforcement agency; or
  - (ii) that is required to be reported by the whistleblower to the Commission, another securities regulatory authority, an SRO or a law enforcement agency, as a result of a pre-existing legal duty;

“internal compliance and reporting mechanism” includes an individual’s supervisor, a whistleblower hotline, an ombudsman, the compliance department, or any other established mechanism for reporting misconduct at the entity at which the individual works;

“monetary sanctions” include administrative penalties ordered under paragraphs 127(1) 9 of the Act or 60(1) 9 of the CFA and disgorgement ordered under paragraphs 127(1) 10 of the Act or 60(1) 10 of the CFA;

“Ontario securities law” includes Ontario securities law, as that term is defined in subsection 1(1) of the Act, and Ontario commodity futures law, as that term is defined in subsection 1(1) of the CFA;

“original information” means:

- (a) information that is not already known to the Commission from any other source, that the whistleblower obtained:
  - (i) from the whistleblower’s independent knowledge, derived from the whistleblower’s experiences, communications and observations in employment, business or social interactions; or
  - (ii) from the whistleblower’s critical analysis of publicly available information, if the analysis reveals information that is not generally known or available to the public; and
- (b) excludes information the whistleblower obtained in the following circumstances:
  - (i) through a communication that was subject to solicitor-client privilege;
  - (ii) in connection with the provision of legal advice to a client or employer, on whose behalf the whistleblower or the whistleblower’s firm acts or provides services;
  - (iii) from an allegation made in a judicial or administrative hearing, an enforcement matter of a securities-related self-regulatory organization (SRO), a government report, hearing, audit or investigation, or news media, unless the whistleblower is the source of the information; or
  - (iv) by a means or in a manner that violates applicable criminal law;

“voluntary payments” exclude any costs voluntarily paid;

“whistleblower” means an individual who provides, or two or more individuals acting jointly who provide,

- (a) voluntarily original information relating to a violation of Ontario securities law that has occurred, is ongoing or is about to occur, to the Commission; and
- (b) the information is submitted in the form described in sections 2 or 3 of this Policy;

“whistleblower award” means a financial award that the Commission determines should be paid to an eligible whistleblower following an award eligible outcome in an enforcement proceeding through the process described in section 22 of this Policy.

## **PART 2 – HOW TO SUBMIT ORIGINAL INFORMATION TO THE WHISTLEBLOWER PROGRAM**

### **Procedure for submitting original information**

2. The Commission expects whistleblowers who submit original information to the Program to:
  - (a) complete the whistleblower information form published on the OSC website at [www.osc.gov.on.ca/whistleblower](http://www.osc.gov.on.ca/whistleblower);
  - (b) read and sign a declaration, declaring, among other things, that the whistleblower understands and agrees that it is an offence under subsection 122(1) of the Act or subsection 55(1) of the CFA to make a statement to the Commission that is misleading or untrue or does not state a fact that is required to be stated to make the statement not misleading and that the whistleblower may be prosecuted for providing misleading or untrue information to the Commission; and
  - (c) submit the completed whistleblower information form and declaration online, or send it by mail to the address in section 26 of the Policy.

### **Procedure for submitting original information anonymously**

3. A whistleblower may submit original information to the Program anonymously if:
  - (a) the whistleblower is represented by a lawyer;
  - (b) the whistleblower or the whistleblower's lawyer completes the whistleblower information form;
  - (c) the whistleblower's lawyer signs a declaration on behalf of the whistleblower; and
  - (d) the whistleblower's lawyer submits the completed whistleblower information form and declaration online or sends it by mail on behalf of the whistleblower.

### **Anonymous whistleblowers**

4. Before any payment of a whistleblower award will be made to a whistleblower who has provided information on an anonymous basis under section 3 of this Policy, the Commission will generally require the whistleblower to provide the Commission with his or her identity, and any additional information necessary to enable the Commission to verify that the whistleblower is not ineligible for a whistleblower award under section 15 of the Policy.

### **Whistleblower assistance**

5. (1) Beyond the whistleblower's initial submission, Commission Staff may request that a whistleblower provide certain additional information, including:
  - (a) explanations and other assistance so that Commission Staff may evaluate and use the information submitted by the whistleblower;

- (b) where the whistleblower has knowledge of documents that support the whistleblower's submission to the Program, but does not have possession of the documents, that the whistleblower provide a description and a precise location for the documents;
  - (c) all additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission, except information subject to solicitor-client privilege or obtained in violation of the *Criminal Code*;
  - (d) testimony at a Commission proceeding, if necessary; and
  - (e) information relating to whether the whistleblower is eligible for a whistleblower award.
- (2) Commission Staff do not expect that a whistleblower obtain documents or other things that are not in the whistleblower's possession or control.

### **Use of information and documents submitted**

6. Information or documents submitted to the Commission by a whistleblower are collected in accordance with Ontario securities law.
7. The Commission has no obligation to use the information or documents submitted by a whistleblower. Regardless of whether the information or documents submitted by a whistleblower ultimately results in the payment of a whistleblower award, the Commission may still use the information or documents for other purposes in carrying out its mandate.
8. (1) Any documents or things provided to the Commission may be used by the Commission, in its discretion, to determine whether there has been a violation of Ontario securities law.
- (2) Any documents or things provided to the Commission will not be returned to the person who submitted the documents or things.

### **Confidentiality of information**

9. (1) All information submitted by a whistleblower to the Program is to be kept confidential by the whistleblower. The Commission expects that whistleblowers will not disclose any information provided to the Commission, including the fact that the whistleblower has made a report to the Commission, except to the whistleblower's legal counsel, if any.
- (2) The Commission also expects that whistleblowers will maintain as confidential any information provided to a whistleblower by Commission Staff or that the whistleblower becomes aware of because of the whistleblower's ongoing participation in the investigation of a matter.

### **Obtaining information about the status of a matter**

10. (1) Commission Staff will generally not provide information about the status of a matter to a whistleblower because of Commission Staff's duty to comply with section 16 of the Act

and section 12 of the CFA, as described in OSC Staff Notice 15-703 – *Guidelines for Staff Disclosure of Investigations*.

- (2) Commission Staff may communicate information about a matter to a whistleblower in the following circumstances:
- (a) if no further action is to be taken on the basis of the information provided by the whistleblower, or if a decision is made not to proceed with the matter, Commission Staff may, in Commission Staff’s discretion, inform the whistleblower who provided the information but need not provide an explanation or reasons;
  - (b) if the information provided by the whistleblower leads to an investigation, this fact will not be communicated to the whistleblower unless it is necessary for Commission Staff to inform the whistleblower of the investigation in order to proceed with the investigation;
  - (c) once there is a public announcement of a notice of hearing, statement of allegations or settlement agreement, communication with a whistleblower who submitted information to the Program is in the discretion of Commission Staff;
  - (d) if there has been an award eligible outcome, and the Commission needs to determine whether the whistleblower is eligible for a whistleblower award, Commission Staff may contact the whistleblower to request additional information to confirm the whistleblower’s eligibility for an award.

### **PART 3 – WHISTLEBLOWER PROTECTIONS**

#### **Confidentiality**

- 11.(1) Commission Staff will make all reasonable efforts to keep the identity of a whistleblower, and information that could be reasonably expected to reveal the whistleblower’s identity, confidential, subject to the following exceptions:
- (a) when Commission Staff is required to make disclosure of the whistleblower’s identity in connection with an administrative proceeding under section 127 of the Act or section 60 of the CFA in order to permit a respondent to make full answer and defence; or
  - (b) when Commission Staff determines that it is necessary to accomplish the purposes of the Act or the CFA to disclose the information to any of the entities listed in section 153 of the Act or section 85 of the CFA, subject to subsection (2).

#### **Consent to disclose to another regulatory authority**

- (2) The Commission will not disclose the whistleblower’s identity, or information that could be reasonably expected to reveal the whistleblower’s identity, to any of the entities listed in section 153 of the Act or section 85 of the CFA without the whistleblower’s consent.

## **Freedom of information**

- 12.(1) The Commission will recommend that requests for information relating to a whistleblower's identity, or information that could be reasonably expected to reveal the whistleblower's identity, made under the *Freedom of Information and Personal Protection of Privacy Act* (FOIPPA) be denied based on:
- (a) FOIPPA section 14(1)(d), which provides protection for confidential sources of information in a law enforcement context; and
  - (b) FOIPPA section 21(3)(b) which protects personal information that has been compiled as part of an investigation into the possible violation of the law.
- (2) In the Commission's view, FOIPPA sections 14(1)(d) and 21(3)(b) would apply to information provided to the Commission by a whistleblower.
- (3) The Commission cannot guarantee that requests for information made under FOIPPA and relating to a whistleblower's identity, or information that could be reasonably expected to reveal the whistleblower's identity, will not be disclosed, because the final decision with respect to access to records resides with the Information and Privacy Commissioner of Ontario or a court of competent jurisdiction.

## **No retaliation**

13. The Commission expects that employers will not: discipline, demote, terminate, harass or otherwise retaliate against a whistleblower who reports information about a reasonably held belief that there has been, is ongoing, or will be, a violation of Ontario securities law to an internal reporting and compliance mechanism or to the Commission or another securities regulatory or law enforcement authority; or take action through contractual agreement or otherwise, to impede a whistleblower from reporting a reasonably held belief that there has been, is ongoing, or will be, a violation of Ontario securities law to the Commission or another securities regulatory or law enforcement authority.

## **PART 4 – ELIGIBILITY FOR A WHISTLEBLOWER AWARD**

### **Information eligible for a whistleblower award**

14. (1) The Commission expects that information that will be eligible for a whistleblower award under the Program will relate to a serious violation of Ontario securities law and will be
- (a) original information;
  - (b) information that has been voluntarily submitted;
  - (c) of high quality and contain sufficient timely, specific and credible facts relating to the alleged violation of Ontario securities law; and
  - (d) of meaningful assistance to Commission Staff in investigating the matter and obtaining an award eligible outcome.

- (2) The Commission will expect that all of the criteria in subsection (1) be met before making a whistleblower award. Information that only meets some of these criteria, such as information from an investor who believes that he or she has suffered a loss as a result of an alleged breach of Ontario securities law, generally would not be eligible because it would not ordinarily meet all of the criteria set out in subsection (1). The Commission recognizes that there may be circumstances where an investor may submit information of sufficient depth and quality to meet all of the criteria in subsection (1) and warrant eligibility for a whistleblower award.
- (3) No whistleblower award will be provided for information that Commission Staff determines is:
  - (a) misleading or untrue;
  - (b) speculative or lacks specificity;
  - (c) subject to solicitor client privilege;
  - (d) publicly known; or
  - (e) not related to a violation of Ontario securities law.

#### **Whistleblowers who are ineligible for a whistleblower award**

- 15.(1) Subject to the exceptions in subsection (2), whistleblowers in one or more of the following categories will generally be considered ineligible for a whistleblower award:
  - (a) those who without good reason refused a request for additional information from Commission Staff under section 5 of this Policy;
  - (b) those who disclosed the fact of their report to the Commission, the existence or scope of an enforcement activity or the content of the whistleblower's submission to the Commission, contrary to section 9 of this Policy;
  - (c) those who obtained information in connection with providing legal services to, or conducting the legal representation of, a client that is, or that employs, the subject of the whistleblower submission, unless disclosure of that information would otherwise be permitted by a lawyer under applicable provincial or territorial barreau or law society rules;
  - (d) those who obtained information in connection with providing legal services to, or conducting the legal representation of, an employer that is, or that employs, the subject of the whistleblower submission, unless disclosure of that information would otherwise be permitted by a lawyer under applicable provincial or territorial barreau or law society rules;
  - (e) those who obtained information in connection with providing internal audit or external assurance services to, or conducting an internal or financial audit of, a client or employer that is, or that employs, the subject of the whistleblower submission;
  - (f) those who obtained information while conducting an inquiry or investigation into possible violations of law by a client or employer that is, or that employs, the subject of the whistleblower submission;

- (g) those who were directors or officers at the entity that is, or that employs, the subject of the whistleblower submission at the time the information was acquired;
- (h) those who had job responsibilities as Chief Compliance Officers (CCO) or a functionally equivalent position at the entity that is, or that employs, the subject of the whistleblower submission at the time the information was acquired;
- (i) those who are or were employed by or an independent contractor for the Commission, another securities regulatory authority, an SRO or a law enforcement agency at the time the information was acquired;
- (j) a spouse, parent, child, sibling or resident of the same household of an employee or contractor of the Commission, another securities regulatory authority, an SRO or a law enforcement agency at the time the information was acquired; or
- (k) those who acquired the information from a person who is ineligible for a whistleblower award, unless the information is about a possible violation of Ontario securities law involving that person;
- (l) those who have been convicted of a criminal offence in relation to the subject matter of the matter for which the whistleblower otherwise could receive an award;
- (m) those who, in their dealings with the Commission knowingly make statements or submit information that is misleading or untrue or does not state a fact that is required to be stated to make the statement not misleading;
- (n) those who make a frivolous, vexatious or meritless submission to the Program;
- (o) those who obtained or provided the information in circumstances which would bring the administration of the Program into disrepute.

### **Exceptions**

- (2) A whistleblower listed in paragraphs (1)(d) to (h) may be eligible for a whistleblower award if:
  - (a) the whistleblower has a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the subject of the whistleblower submission from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;
  - (b) the whistleblower has a reasonable basis to believe the subject of the whistleblower submission is engaging in conduct that will impede an investigation of the misconduct; or
  - (c) at least 120 days have elapsed since the whistleblower provided the information to the relevant entity's audit committee, chief legal officer, CCO (or their functional equivalents) or the individual's supervisor.

## **Internal reporting**

- 16.(1) The Commission encourages whistleblowers who are employees to report potential violations of Ontario securities law in the workplace through an internal compliance and reporting mechanism in accordance with their employer's internal compliance and reporting protocols. However, the Commission does not require whistleblowers to do so, recognizing that there may be extenuating circumstances for the whistleblower that might otherwise impede his or her reporting to an internal compliance and reporting mechanism.
- (2) If a whistleblower reports information about a violation of Ontario securities law to an internal compliance and reporting mechanism, and the whistleblower's employer organization provides the whistleblower's information to the Commission, or the results of an audit or investigation initiated in response to information reported by the whistleblower to the employer organization, and an award eligible outcome results from that self-report, the whistleblower may be entitled to a whistleblower award provided the whistleblower reports the same information to the Commission within 120 days of the initial internal report.
- (3) If a whistleblower submits information about a violation of Ontario securities law to the Commission due to a failure by the whistleblower's employer organization to respond to a report made by the whistleblower to an internal compliance and reporting mechanism, and another whistleblower has in the intervening period submitted information about the same violation of Ontario securities law to the Commission, the Commission will generally consider the timing of the initial internal report in determining who submitted the information first, provided that not more than 120 days have passed since the initial internal report.

## **Culpable whistleblowers**

17. (1) A whistleblower who is complicit in the violation of Ontario securities law about which the whistleblower submitted information to the Commission may be eligible for a whistleblower award.
- (2) The degree to which a whistleblower is complicit in the conduct that is the subject of the information provided to the Commission is a factor that may decrease the amount of any whistleblower award that may be made.
- (3) In determining whether the required \$1,000,000 threshold for an award eligible outcome has been satisfied for the purposes of making any whistleblower award, the Commission will not take into account any voluntary payments made by a complicit whistleblower or monetary sanctions that a complicit whistleblower is ordered to pay, or that are ordered against any entity whose liability is based substantially on conduct that the whistleblower directed, planned or initiated.
- (4) Any portion of the voluntary payment made by, and/or monetary sanctions awarded against, a whistleblower who is complicit in the violation of Ontario securities law reported to the Commission, will be deducted from any whistleblower award paid to a complicit whistleblower.

- (5) The provision of information to the Commission by a culpable whistleblower does not preclude the Commission from taking enforcement action against the whistleblower for the whistleblower's role in the violation of Ontario securities law.

## **PART 5 – WHISTLEBLOWER AWARDS**

### **Amount of whistleblower award**

18. (1) If there is an award eligible outcome, the Commission will pay an eligible whistleblower a whistleblower award of between 5 and 15% of the total monetary sanctions imposed and/or voluntary payments made.
- (2) The Commission will determine the percentage amount of the whistleblower award based on the factors set out in section 24 of this Policy.
- (3) If multiple related proceedings arise based on information provided by a whistleblower, the total monetary sanctions imposed and/or voluntary payments made in each proceeding will be considered to determine whether the \$1,000,000 threshold for an award eligible outcome has been met.
- (4) If the total monetary sanctions imposed and/or voluntary payments made in a proceeding, or multiple related proceedings, is equal to or greater than \$10,000,000, the maximum amount of any whistleblower award is \$1,500,000 subject to subsection (5).
- (5) If the total monetary sanctions imposed and/or voluntary payments made in a proceeding, or multiple related proceedings, is equal to or greater than \$10,000,000, and the Commission collects monetary sanctions and/or voluntary payments in respect of that proceeding in an amount equal to or greater than \$10,000,000, the whistleblower award will not be limited to \$1,500,000 and the whistleblower may receive a whistleblower award of between 5 and 15% of the monetary sanctions or voluntary payments collected from that proceeding to a maximum of \$5,000,000.

### **Enforcement outcome eligible for a whistleblower award**

19. To receive a whistleblower award, the Commission generally expects that a whistleblower will be eligible and have voluntarily provided original information that will have been of meaningful assistance to Commission Staff in an administrative proceeding under section 127 of the Act or section 60 of the CFA that resulted in an award eligible outcome following a hearing or a settlement.

### **No award – circumstances**

20. The Commission will generally not make a whistleblower award in the following circumstances:

- (a) there is a determination that an individual who submitted information to the Commission is not an eligible whistleblower; or
- (b) the outcome of any proceeding resulting from a whistleblower submission is not an award eligible outcome (e.g., the matter is pursued quasi-criminally, the voluntary payments made and/or monetary sanctions ordered are less than \$1,000,000 or the Commission's decision to order monetary sanctions is overturned on appeal).

### **Timeframe for an award**

21. The Commission works to conclude enforcement proceedings as efficiently as possible but it may take several years or more from the date a whistleblower submits the whistleblower information form and declaration until an administrative proceeding under section 127 of the Act or section 60 of the CFA has been concluded or a settlement reached, monetary sanctions have been ordered or voluntary payments made and the respondent's appeal rights have expired, and a whistleblower award can be made.

### **Whistleblower award process**

22. (1) At the conclusion of any administrative proceeding under section 127 of the Act or section 60 of the CFA brought based on information submitted by a whistleblower, Commission Staff will prepare a recommendation containing an analysis of:
- (a) the eligibility of the whistleblower for a whistleblower award, including an evaluation of whether the information provided was voluntarily submitted and original; and
  - (b) the amount and effectiveness of assistance provided by the whistleblower based on the award criteria.

### **Staff Committee**

- (2) A Commission Staff committee (the Staff Committee), including the Director of Enforcement, will review the Commission Staff recommendation.

### **Staff Committee recommendation**

- (3) The Staff Committee will then make a recommendation that will be provided to the Commission regarding the whistleblower's eligibility and, if eligible, the recommended amount for the whistleblower award.

### **Eligibility – additional information**

- (4) To help the Staff Committee and the Commission assess if a whistleblower is eligible for a whistleblower award, the Commission or Commission Staff may request additional information from the whistleblower, if necessary.

### **Commission discretion**

- (5) The Commission will review the Staff Committee recommendations and determine if a whistleblower is eligible for a whistleblower award, and if so, may exercise its discretion to modify the amount of the whistleblower award recommended by the Staff Committee.

### **Public disclosure**

- (6) The Commission may publicly disclose that a whistleblower award has been paid. If such an award is paid, it may be publicly disclosed without the identity of the whistleblower.

### **Authorization for payment of whistleblower award**

23. The Commission will authorize the payment of a whistleblower award to a whistleblower once the Commission has determined:

- (a) that the whistleblower is eligible;
- (b) that there was an award eligible outcome; and
- (c) the amount to be awarded.

### **Determining amount of whistleblower award**

24. (1) In exercising its discretion to determine the appropriate percentage of a whistleblower award, the Commission may consider the factors set out in subsection (2) and (3) and may increase or decrease the percentage of the whistleblower award based on its analysis of the factors, and/or use the factors to determine how to apportion an award among multiple whistleblowers, if applicable in the circumstances.

### **Factors that may increase the amount of a whistleblower award**

(2) The following factors may increase the amount of a whistleblower award:

#### *Timing*

- (a) the timeliness of the whistleblower's initial report to the Commission or to an internal reporting mechanism of the business involved in committing, or impacted by, the violation of Ontario securities law;

#### *Significance of information*

- (b) the significance of the information provided by the whistleblower, including:
  - (i) whether the information provided by the whistleblower caused Commission Staff to open an investigation or broaden the scope of an existing investigation;
  - (ii) the truthfulness, reliability and completeness of the information;
  - (iii) whether the allegations in the proceeding related, in whole or in part, to violations of Ontario securities law identified by the whistleblower; or
  - (iv) the degree to which the information meaningfully contributed to a successful investigation of the violation and obtaining an award eligible outcome;

*Degree of assistance*

- (c) the level of assistance the whistleblower provided to Commission Staff, including:
  - (i) whether the whistleblower provided ongoing, extensive and timely cooperation and assistance by, for example helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry; or
  - (ii) whether the whistleblower appropriately encouraged or authorized others who might not otherwise have participated in the investigation to assist Commission Staff;

*Impact on Investigation or Proceeding*

- (d) as a result of the whistleblower's assistance, less time was needed to investigate or bring an enforcement proceeding;

*Remediation and recovery*

- (e) the whistleblower's efforts to remedy the harm caused by the violations of Ontario securities law that were reported, including assisting the authorities in recovering any amounts obtained as a result of non-compliance with the Act or the CFA;

*Internal compliance and reporting systems*

- (f) whether and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance and reporting systems by:
  - (i) reporting the possible securities violations through an internal compliance and reporting mechanism before, or at the same time as, reporting them to the Commission; or
  - (ii) assisting in any internal investigation or inquiry concerning the reported violations.
- (g) the impact the whistleblower's report to the Commission or an internal compliance and reporting mechanism had on the behavior of the person or entity that committed the violation, for example by causing the person or entity to promptly correct the violation;

*Unique hardship*

- (h) any unique hardships experienced by the whistleblower resulting from the whistleblower's report to the Commission or an internal compliance and reporting mechanism;

*Contribution to the Commission's mandate*

- (i) the degree to which providing an award to the whistleblower would:
  - (i) enhance the Commission's ability to pursue the purposes of the Act or the CFA;
  - (ii) encourage the submission of high quality information from other whistleblowers, having regard to the whistleblower's submission of significant information and meaningful assistance, even when the monetary sanctions available for collection were limited or potential monetary sanctions were reduced or eliminated by the

Commission because, for example the entity self-reported following the whistleblower's report to an internal reporting mechanism;

*Contribution to the Commission's priorities*

- (j) whether the subject matter of the action is a Commission priority because:
  - (i) the reported misconduct involved regulated entities or fiduciaries;
  - (ii) the violations of securities laws were particularly serious given the nature of the violation, the age and duration of the violation, the number of violations and the repetitive or ongoing nature of the violations;
  - (iii) the danger to investors or others presented by the violations involved in the enforcement actions, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed; or
  - (iv) without the information, the Commission would have been unable or unlikely to investigate the matter.

**Factors that may decrease the amount of a whistleblower award**

(3) The following factors may decrease the amount of a whistleblower award:

*Erroneous or incomplete information*

- (a) the information provided by the whistleblower was difficult for Commission Staff to use because, for example the whistleblower had little knowledge of the violation of Ontario securities law, or the information provided by the whistleblower contained errors, was incomplete or lacking in detail, unclear or not organized;

*Whistleblower culpability*

- (b) the degree to which the whistleblower was culpable or involved in the violations reported that became the subject of the Commission's enforcement proceeding, including:
  - (i) the whistleblower's role in the reported violations of Ontario securities law;
  - (ii) whether the whistleblower benefitted financially from the violations;
  - (iii) whether the whistleblower has violated Ontario securities law in the past;
  - (iv) the egregiousness of the whistleblower's conduct; and
  - (v) whether the whistleblower knowingly interfered with the Commission's investigation of the violations;

*Unreasonable delay in reporting*

- (c) whether the whistleblower unreasonably delayed reporting the violation(s) of Ontario securities law, including:
  - (i) whether the whistleblower was aware of relevant facts but failed to take reasonable steps to report the violations or prevent the violations from occurring or continuing;

- (ii) whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action; and
- (iii) whether there was a legitimate reason for the whistleblower to delay reporting the violations;

*Refusal of assistance*

- (d) the whistleblower refused to provide additional information or assistance to the Commission when requested pursuant to section 5 of this Policy;

*Interference with Commission Staff's investigation*

- (e) the whistleblower or the whistleblower's legal counsel negatively affected Commission Staff's ability to pursue the matter;
- (f) the whistleblower or the whistleblower's counsel violated instructions provided by Commission Staff;

*Interference with internal compliance and reporting mechanisms*

- (g) whether the whistleblower undermined the integrity of internal compliance and reporting systems by:
  - (i) interfering with an entity's established legal, compliance or audit procedures to prevent or delay detection of the reported violation of Ontario securities law;
  - (ii) making any material false, fictitious or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported violation of Ontario securities law; and
  - (iii) providing any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported violation of Ontario securities law.

**No appeal**

25. The Commission's determination whether or not to grant a whistleblower award and any amount awarded to a whistleblower are not subject to appeal. No private right of action is conferred on a whistleblower to seek a whistleblower award.

## **PART 6 – CONTACT**

### **Contact information**

26. Potential whistleblowers who have questions about the Program or their eligibility should contact the Commission’s Office of the Whistleblower at:

1-800-XXXX OR

whistleblower@osc.gov.on.ca

To submit information by mail, please send to:

Ontario Securities Commission  
Whistleblower Office  
20 Queen Street West,  
Toronto, ON M5H 3S8

## **PART 7 – TRANSITION**

### **Transition**

27. No one will be eligible for the payment of a whistleblower award under this Policy for information that is submitted to the Commission before this Policy comes into force on **[Date]**.