

December 9, 2024

General Counsel's Office
Canadian Investment Regulatory Organization (CIRO)
GCOcomments@ciro.ca

Re: Distributing Funds Disgorged and Collected through CIRO Disciplinary Proceedings to Harmed Investors (Phase II)

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.¹

A. General Comments

We appreciate the opportunity for further comment on CIRO's disgorgement proposal (the Proposal). FAIR Canada supports a program for returning disgorged funds to harmed investors. Compensating wronged investors shows that the regulatory system works for them and aligns with their expectations.

This letter supplements our April 2023 submission to CIRO² on its 2023 disgorgement proposal.³ The current Consultation clarifies various details of the 2023 proposal and poses specific questions. Below, we comment on certain aspects of the Proposal.

B. Application of the Proposal to all CIRO Dealers

¹ Visit <https://faircanada.ca/> for more information.

² FAIR Canada, [Comment Letter](#) on Proposal on Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors, April 28, 2023.

³ CIRO, [Proposal on Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors](#), February 1, 2023.

The Consultation asks whether the Proposal should apply to clients of all CIRO dealers (i.e., investment dealers, mutual fund dealers and dual-registered firms). We support applying the Proposal to clients of all CIRO dealers.

Mutual funds are a popular investment among retail investors. FAIR Canada's investor survey found that almost 60% of respondents own mutual funds,⁴ which is consistent with other research.⁵ Allowing disgorged funds to go to harmed clients of mutual fund dealers would expand the Proposal's reach to this large segment of the investor population. Moreover, it would level the playing field and help ensure consistent investor protection across different types of dealers. Extending the Proposal to all CIRO dealers would show CIRO's commitment to protecting investors regardless of where they invest, strengthening public confidence in the regulatory system.

C. Discretion Not to Distribute Funds

The Consultation clarifies that CIRO would have the discretion not to distribute money if the disgorged funds collected and the number of potential claimants do not justify the distribution costs.

We appreciate there may be instances where carrying out a distribution does not make economic sense. CIRO should be transparent about how and when it makes such decisions. We recommend that CIRO:

- Establish guidelines setting out how it will determine whether to conduct a distribution to help ensure consistency, and
- Disclose instances where it decided a distribution was unwarranted and why in its annual enforcement reports and on its website.

A clear, robust process for CIRO exercising its discretion not to distribute funds will help instill trust in the disgorgement framework. Where CIRO deems a distribution impractical, disclosure reassures investors that CIRO appropriately considered their interests. It also helps set investor expectations and clarifies how CIRO may handle similar situations.

D. Simplify Claim Administration

The Consultation requests comment on CIRO's proposal to keep claim administration as simple as possible to facilitate investors' access to disgorged funds. FAIR Canada supports this proposal, which will help reduce costs and maximize the amounts harmed investors receive.

In line with the idea of simplicity, we are pleased that CIRO anticipates administering most distributions in-house. External administrators can be expensive and should only be used where necessary. We encourage CIRO to establish clear guidelines on the factors it will consider when seeking a third-party administrator and the selection process. The guidelines should ensure that external administrators are only used when their expertise and resources are needed (e.g., the distribution is complex, involving many investors in

⁴ FAIR Canada, [Investor Survey](#), December 2022, p. 19.

⁵ For example, the [2024 CSA Investor Index](#) found that 53% of those with savings or investments hold mutual funds (p. 34).

multiple jurisdictions). Their selection and performance should be transparent, accountable, and beneficial to harmed investors.

E. Claims Process

a. Notice to Investors

The Proposal states that CIRO will send notice of a distribution to potential claimants' last known addresses. CIRO will also post information about distributions on its website. Further, CIRO may provide notice via news outlets and/or social media, depending on the circumstances and likely location of potential claimants.

As the key document that triggers the claims process for the investor, notice should be as broad as possible. For all distributions, CIRO should be required to send notice:

- To potential eligible claimants' last known mailing and email addresses, if available. CIRO should make reasonable efforts to ascertain the last known addresses,
- Via CIRO's website,
- By press release. This is consistent with the British Columbia Securities Commission's (BCSC) requirement to issue a press release when it has received money that gives rise to a claims process, and
- Via the social media channels CIRO commonly uses.

Finally, if CIRO believes some harmed investors belong to particular linguistic communities, it should translate notices into the relevant language(s). CIRO should also design notices to reach investors in remote communities.

b. Timeframe for Filing a Claim

Rather than setting a fixed timeline for filing a claim, CIRO proposes establishing timelines on a case-by-case basis. We support flexibility in the filing deadline so CIRO can tailor it to the particular group of investors and the expected complexity of the distribution.

However, we recommend that the deadline generally be at least 90 days from the date of the notice. This timeframe is consistent with the Ontario Securities Commission's (OSC) disgorgement proposal⁶ and aligns

⁶ OSC, [Proposed OSC Rule 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed OSC Rule 11-503 \(Commodity Futures Act\) Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-503 \(Commodity Futures Act\) Distribution of Amounts Paid to the OSC under Disgorgement Orders – Modernize the Process to Distribute Disgorged Amounts to Harmed Investors](#), July 11, 2024.

with the BCSC regime, in which the application deadline must be at least three months from the notice date.⁷

The Proposal states that a claimant cannot participate in the distribution if they submit their application after the deadline. We believe CIRO should accept late applications in exceptional circumstances. For example, an applicant may be severely ill, hospitalized, or incapacitated during the filing period. In these situations, CIRO should allow late applications.

c. Reconsideration of Claims

The Consultation asks for comment on an internal reconsideration mechanism. If CIRO rejects a claim or a claimant disagrees with their entitlement amount, they can request a reconsideration within 30 days. The Proposal clarifies that (a) a CIRO employee who was not involved in the initial determination would conduct the review, (b) CIRO may consider third-party reconsideration processes in complex cases, and (c) CIRO would determine reconsideration timelines on a case-by-case basis, allowing longer timelines where appropriate.

We support CIRO’s approach to the reconsideration process. Giving claimants 30 days to request a review, subject to case-by-case exceptions, balances fairness to the investor (so they can explain why their claim should be allowed) and procedural efficiency (so disputed claims do not unduly delay the distribution).

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for investors. We intend to post our submission on the FAIR Canada website and have no concerns with CIRO publishing it on its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Tasmin Waley, Policy Counsel, at tasmin.waley@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

⁷ BC Policy 15-603, [Returning Funds to Investors](#), March 27, 2020.