

INVESTOR ADVISORY PANEL

January 20, 2025

General Counsel's Office
Canadian Investment Regulatory Organization
Email: GCOcomments@ciro.ca

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

On behalf of the Ontario Securities Commission's Investor Advisory Panel (the "Panel"), I wish to thank you for this opportunity to comment on Phase II of the Canadian Investment Regulatory Organization's ("CIRO") proposal regarding distributing funds disgorged and collected through CIRO disciplinary proceedings to harmed investors (the "Proposal").

The Panel is an initiative of the Ontario Securities Commission ("OSC") to ensure investor concerns and voices are represented in the OSC's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

General Comments

The Panel supports the Proposal. While we recognize that disgorgement is not the same as restitution, and investors may need to pursue other means of compensation to obtain full recovery, we believe that distribution of disgorged funds to investors is consistent with and will foster both investor protection and confidence in the capital markets.

Specific Comments

Notifying Harmed Investors

Under the Proposal, any investor who incurred a direct, provable financial loss as a result of the misconduct, did not benefit from or participate in the misconduct, and has not received compensation for the same loss from other sources, is eligible to submit a claim for distribution. This includes investors who may not have been identified during the investigation or enforcement proceeding that led to the disgorgement order.

The Panel does not have any specific comments on the proposed eligibility criteria, but we note that there is a risk that not all eligible investors will become aware of the process in time to submit a claim. However, we commend CIRO for its commitment to provide notice both directly (to known investors' last-known addresses) and widely (through the use of news releases and/or social media) when sufficient disgorged funds have been collected in order to commence the distribution process. We also support the proposal to work with CIRO dealers and/or product issuers to provide notice to eligible investors where possible.

We believe that notification should be made in as many forms as possible, given the challenges of notification identified in the Proposal. This could include a coordinated approach by Canadian securities regulators whereby the notices of collection and distribution would be aggregated and published on one designated website.

With respect to the notice period, the Panel suggests that eligible investors be afforded a minimum of 90 days to submit a claim. While we recognize that the notice period is not prescribed, in our view a 30-day notice period is too short. Investors should have enough time to compile whatever documents will be necessary to prove their claims – which can involve requesting them from third parties, which can take time – and to accommodate other demands on their time.

Claim Administration

The Panel supports CISO's efforts to keep the claims process as simple as possible. We believe that eligible investors will be more likely to submit a claim if it is easy to do so, and commend CISO for this approach.

The Panel also supports the proposal to implement a reconsideration process. We observe that reconsideration might be sought by investors who become aware of a claim after the notice period, and recommend that the process be available where claims are denied on this basis, as well as other cases where an investor is determined to be ineligible or a claim is denied.

Again, thank you for the opportunity to comment on the Proposal. We would be pleased to clarify or elaborate on our comments should the need arise.

Sincerely,



James Sinclair
Acting Chair, Investor Advisory Panel