

General Counsel's Office

New Self-Regulatory Organization of Canada

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April 10, 2023

Dear Sirs/Mesdames:

Thank you for the opportunity to comment on the white paper *Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors* (the "white paper") published by New Self-Regulatory Organization of Canada ("New SRO"). We commend New SRO for its efforts to ensure disgorged funds are returned to harmed investors.

We note that our comments assume that New SRO keeps the claims collection and distribution functions in-house. Several Investor Advisory Panel members feel that a better solution is to consider outsourcing these functions to a third party, such as a collection agency for the collection function.

Claim Eligibility

The white paper proposes to define the class of potential investors eligible for the disgorgement program to those who fit within parameters of a particular enforcement action. We concur with this approach as it is likely the most practical course of action. We encourage New SRO to identify these investors as soon as practicable so the scope of the disgorgement exercise can be defined, ideally at the investigative stage.

Program Administrator and Distribution of Disgorged Amounts

We appreciate that the white paper is intended to be a high-level overview of the principles of the disgorgement program planned for the New SRO. However, administering this program will require dedicated resources, both staff and technology, to execute it effectively. We encourage New SRO to plan well in advance of the first claim being received what resources it will need, including consideration of a claims database, dedicated toll-free phone line and automated call logs. These tools may already be available internally.

Program Administrator

We agree that the Program Administrator role should be outside of the Enforcement Process, and not staffed by the Enforcement Branch. We suggested that a separate group be established and linked closely to the Office of the Investor, to best enhance accountability and align with investors' interests.

Notice to Eligible Investors and Public Transparency

We emphasize the importance of a simple, plain language notice being sent to investors. We also recommend that for all disgorgements, public notice via New SRO's website and social media also be provided. We also suggest consideration be given to the need for second contact attempts with investors if no response is received to the initial notice, perhaps either by sending a second notice within a defined timeframe or following up with a phone call.

Application Process

We do not object to the concept that investors must apply to receive payment. However, every effort must be made to make the application process as easy to execute as possible. We agree that sending the application with the notice and posting it on line are good ideas. We also suggest staffing a toll-free phone line to take claims over the phone for those marginalized or underserved investors who do not have Internet access or who are unable to complete the forms themselves. We also recommend a longer timeline to opt in to the program than 30-90 days as proposed in the white paper. We suggest up to 120 days will give investors more time to alert themselves to the disgorgement program and complete the necessary paperwork. Finally, we suggest defining the concepts of disgorgement and restitution early on will help investors set reasonable expectations for the outcome of the disgorgement process.

Claim Assessment

We note the white paper requires identity verification and other documentation to prove the amount of the loss. The latter requirement could be difficult for investors who are unsophisticated and who often do not retain financial documentation for any period of time. We recommend such documentation be encouraged, but not required. Presumably the Program Administrator group could access the firm's systems to independently verify the investor's claims. Standardized methodology and documentation should be established by the Program Administrator for the review of claims.

We suggest the Program Administrator advise claimants whether their claim is accepted and the amount they will receive via the same means of communication the claimants have used. This may require a phone call to reach affected parties in addition to mailing a letter.

We note the white paper allows claimants to request the Program Administrator reconsider the amount of their entitlement in certain circumstances. We recommend New SRO consider what mechanism it will use for such a review. For example, is it intended this review be carried out by staff that made the initial determination or independently of the initial review? It may be appropriate in some circumstances (e.g. large number of disputed claims, large dollar amounts) to consider a degree of third party involvement in the review, through establishing a disgorgement claims review committee.

Distribution

Consideration should be given to the payment mechanisms that will be offered to investors and the resources required to facilitate payment. We appreciate this is operational in nature but the actual distribution is another aspect of disgorgement that could require considerable resources to ensure accessibility by investors to the payment proceeds.

Investor Education

We recommend that New SRO include a component in its investor education program to describe the various dispute resolution and compensation models available to Canadian investors. As noted in the white paper, this is a complex landscape and investors need to clearly understand how disgorgement fits in.

Other Considerations

The Ombudsman for Banking Services and Investments has over 25 years of experience and expertise in assessing and handling claims. The opportunity to learn from OBSI's experience and expertise could be quite helpful. The Canadian Investor Protection Fund also has deep experience in claims administration and may be a helpful resource.

We would be pleased to discuss our comments further with you at your convenience.

Regards,

New SRO Investor Advisory Panel