



October 9, 2024

VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-8122
Email: comments@osc.gov.on.ca

Re: Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders*, 11-503 (*Commodity Futures Act*) *Distribution of Amounts Paid to the OSC under Disgorgement Orders* and accompanying proposed companion policies (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ appreciates the opportunity to provide the following general comments on the Consultation.

The CAC has supported legislative reforms to the distribution framework for disgorged funds since the Ontario Capital Markets Modernization Taskforce recommended a court-supervised process to facilitate it. We are pleased that the OSC is introducing rules to support the new statutory framework and are also pleased that the OSC will be empowered to distribute such funds without the use of a court-appointed administrator, in applicable circumstances.

Collection and Distribution

The existing distribution framework, requiring either a court-appointed administrator or the assistance of the Ontario Ministry of the Attorney General² depending on the value or complexity of the distribution can result in an overly expensive, lengthy, and/or inefficient process that can limit positive investor outcomes. We are hopeful that the proposed framework will promote a more efficient and timely process that maximizes the amounts received by harmed investors. To this end, we would encourage the OSC to consider the feasibility of taking on an expanded role in distributions (as opposed to reliance on third-party administrators) as a cost-saving utility function in the public

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and serves as the leading source of learning and research for the investment industry. CFA Institute believes in fostering an environment where investors' interests come first, markets function at their best, and economies grow. Spanning nearly 200,000 charterholders worldwide across 160 markets, CFA Institute has ten offices and 160 local societies. Find us at www.cfainstitute.org or follow us on LinkedIn and X at @CFAInstitute.

² Per the *Civil Remedies Act (Ontario)*, 2001



interest. We would also encourage the OSC to consult adjacent sources of experience and expertise in claims adjudication/calculation and distributions, such as the Ombudsman for Banking Services and Investments (“OBSI”), in pursuit of the goal of better wronged-investor outcomes, efficiency, and minimized administrative costs. Furthermore, to better promote confidence in the disgorgement framework, we would encourage the OSC to ensure that, if it decides that the costs of administering a distribution does not justify the release of the funds due to the value of the distribution and the number of potential eligible applicants, that the OSC will provide published notice of same, along with reasons for its decision, with a delivery obligation of the notice to otherwise-eligible applicants for disgorgement funds. The value of the applicable minimum threshold for distribution/adjudication against a disgorgement amount received at any point in time should also be easy to find and prominently displayed on the OSC’s website. We are also of the view that the threshold to support a decision that any given distribution of funds is unjustified should be set at a high level, as even a lower-than-ordered return of funds could help dampen the negative impacts on harmed investors and build confidence in the integrity of Ontario’s capital markets.

Notice

Currently, the proposed means of providing notice to harmed investors that the OSC is in receipt of funds pursuant to a disgorgement order and the subsequent notice of claims process is through a posting on the OSC’s website. We are concerned that this creates the potential of limiting the awareness of the pool of eligible applicants, as certain investors may not be aware of this process or the OSC’s role in it. We would encourage the OSC to further consider other means of notice, and ultimately a notice delivery obligation, to the extent investor identity and their contact information is available to or discoverable by Staff of the OSC, to ensure the widest possible pool of potentially eligible applicants are aware of and participate in the OSC’s claims process. In addition, the OSC may want to consider how it can amplify awareness to potential eligible applicants of the disgorgement process, whether through establishing communication channels with investor protection clinics or other organizations that may utilize their platform with market participants, or more generally by conducting outreach initiatives to educate investors on their rights to apply for a distribution and the means of exercising such rights.

We are also supportive of the OSC’s jurisdictional approach in constructing the distribution framework. We are pleased that the OSC utilized elements of the framework of the British Columbia Securities Commission as a starting point and supplemented it with elements of the frameworks of other jurisdictions, particularly seeming inspiration from the SEC’s model of empowering the regulator to directly conduct distributions where appropriate.

Furthermore, we are pleased that the proposed rules do not preclude investors from seeking redress through civil claims or the complaint process through OBSI. We also strongly support the proposed fairness measures taken under Section 10 of the proposed rules with respect to the fact that the amount of payment an applicant may receive will take into consideration, but will not necessarily preclude being entitled to



otherwise receive payment from other sources for the same contravention that caused the direct financial loss that would be eligible for disgorged amounts.

Concluding Remarks

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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