

CIRO DISGORGEMENT DISTRIBUTION PROGRAM

GUIDANCE AND PROCEDURES

PART 1

GENERAL

Purpose

This guidance and procedures document sets out how CIRO interprets and applies its Disgorgement Distribution Program (the “Program”) Policy.

The Policy establishes the framework for distribution of money received by CIRO under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of CIRO rules and applicable securities laws. This framework addresses:

- the circumstances under which money received by CIRO under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by CIRO;
- a process for distributing disgorged amounts to eligible investors; and
- the use of monetary sanctions other than disgorgement (administrative fines and other sanctions) received by CIRO to cover certain administrative costs of the Program.

Background

CIRO sets and enforces rules for the business and financial conduct of Canadian investment and mutual fund firms and their representatives across Canada. All registered representatives are subject to high proficiency standards, training, and supervision by member firms.

The compliance teams examine firms for compliance with conduct, trading, prudential and operating rules, and work with firms to ensure that they continually meet high standards while providing financial services to their clients.

Enforcement investigates possible breaches of CIRO rules and brings proceedings to discipline firms and individuals when regulatory misconduct is identified. Discipline can include such sanctions as administrative fines, disgorgement, suspensions, and permanent bans or termination for both individuals and firms.

Market Surveillance monitors equity markets in real time. If needed, CIRO can halt trading in a stock and even cancel or adjust trades where market integrity is concerned. Market Surveillance also covers both CIRO dealer debt trading on a next day basis and newly added Canadian crypto-asset trading platforms' activity.

When a person or company is alleged to have engaged in misconduct in relation to requirements under the CIRO rules or related requirements under applicable securities laws, CIRO may bring enforcement proceedings before a hearing panel. Hearing panels can impose various monetary and non-monetary sanctions. Where a hearing panel has found that there has been a contravention of requirements under the CIRO rules, one of the orders they may make is an order that the person or company disgorge to CIRO any amounts obtained as a result of the contravention.

The purpose of a disgorgement order is not to compensate investors. Rather, disgorgement orders are made to prevent a party who has engaged in misconduct from benefitting from their misconduct, to deter the party and others from engaging in similar misconduct, and to restore confidence in the capital markets. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

CIRO makes reasonable efforts to collect monetary sanctions imposed by hearing panels, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent CIRO can collect money under a disgorgement order, CIRO will distribute the money to investors who incurred direct financial losses as a result of the contravention giving rise to the payment, and satisfy the conditions, restrictions and requirements set out in the Policy.

The Program is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement focuses on the amount obtained by the respondent as a result of the contravention. Disgorgement does not focus on "who lost what". Accordingly, CIRO may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that CIRO can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves CIRO conducting a distribution directly. The second involves the appointment of an external administrator and is typically reserved for more complex distribution cases.

The method of distribution selected by CIRO will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an internal CIRO administrator. CIRO will generally appoint an external administrator only when the complexity of the distribution is outside of the subject matter expertise of CIRO staff (e.g., the group of potential applicants is large and cannot be readily identified, the distribution involves novel legal issues or difficulty in quantifying financial losses or locating potential applicants).

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by CIRO are referred to as eligible applicants. An eligible applicant includes any person or company that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

“Person” includes, among other things, a “trust, trustee, executor, administrator, or other legal representative.” In circumstances where an investor is unable to participate in the claims process directly, a person such as a trustee, executor or other legal representative may file a claim on behalf of the investor.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order. All investors directly harmed by the misconduct resulting in the contravention of the CIRO rules and requirements pursuant to the disgorgement order can apply for a payment out of the disgorged funds received by CIRO.

Direct financial losses

The Program deals with contraventions that were found in disciplinary proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a “direct financial loss” may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a

direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor by the respondent or from another source). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor’s “direct financial loss” could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent’s contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

PART 2

DISTRIBUTIONS

Under the Policy, money received by CIRO pursuant to a disgorgement order will be distributed to eligible applicants unless the decision giving rise to the disgorgement order has not been finally disposed of, or the amount received is too small to justify the costs of distributing it. In the latter case, the amount will be directed to the CIRO Restricted Fund.¹

¹ **CIRO Restricted Fund:** Money from fines and settlements is contributed to CIRO’s Restricted Fund, which finances reasonable costs associated with the administration of CIRO’s investor office, investor advisory panel and hearing panels. CIRO may also use these funds for emerging regulatory issues, education and research projects, a whistleblower program, supporting non-profit, tax-exempt organizations focused on investor protection, or other uses authorized by the CSA.

The distribution requirement will not apply in circumstances where the deadline for filing an application for a hearing and review of the CIRO hearing panel decision that gave rise to the disgorgement order has not yet expired or an application for review is ongoing. In these circumstances, CIRO will continue to hold any funds received under the disgorgement order for potential distribution to eligible applicants until after the review process has been exhausted.

In circumstances where there are multiple respondents related to an alleged contravention that could give rise to a payment, CIRO will generally hold disgorged amounts received from any settling respondents for future distribution pending the conclusion of any proceeding involving the other respondent(s). This approach will be taken by CIRO to manage distribution costs by allowing for the potential distribution of all disgorged amounts received from all sources in relation to the same contravention in a single distribution.

Subsections 2 (2) to (5) - Partial amounts received

CIRO's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on several factors, including:

- the amount received,
- the status of any steps taken by CIRO to recover additional amounts owing under the order,
- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and
- the time that has passed from either the date the disgorgement order was issued, or if the decision that gave rise to the disgorgement order has been under review, the date the review process was exhausted.

CIRO makes reasonable efforts to enforce hearing panel decisions, including collecting unpaid monetary sanctions and costs. CIRO hearing panel decisions are routinely filed in court and become enforceable as though they are court orders. This allows CIRO to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances CIRO becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where CIRO has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Policy requires CIRO to hold the amount received for potential distribution to eligible applicants for up to 3 years from the date of the final disposition of the decision that gave rise to the disgorgement order if CIRO receives sufficient additional amounts under the disgorgement order within that period to justify the costs of a distribution. In circumstances where the decision that gave rise to the disgorgement order has been under review, this 3-year period runs from the date that the review process has been exhausted.

During this 3-year period, CIRO may receive a partial amount under the disgorgement order that justifies carrying out a distribution. In these cases, CIRO may consider the following factors before deciding whether to proceed with a distribution at that time or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, CIRO may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Policy provides that CIRO is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Policy provides CIRO with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. CIRO may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, CIRO may decide to continue to hold the amounts received for potential future distribution to eligible applicants. CIRO may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would justify carrying out a distribution.

PART 3

PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Policy involves two distinct steps. The first step is the publication of disgorged amounts received by CIRO on CIRO's website. The second step is the publication of the notice of claims process on CIRO's website by way of a press release.

Section 3 - Publication of money received under disgorgement orders

For each case where disgorgement is ordered, amounts received by CIRO under that order will be published on its website and updated to include additional amounts received. Such updates are to be published in a timely manner. As part of these updates, additional information relevant to the distribution will be added as it becomes available.

Information published on the website will generally include:

- the proceeding in which the disgorgement order was made and the respondent(s) to that proceeding who are subject to the order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by CIRO, and any amounts outstanding in respect of these orders; and
- any other information that CIRO considers appropriate.

Section 4 - Publication of notice of claims process

A notice relating to how a distribution will be carried out will be published on CIRO's website, accompanied by a press release. This notice will include information about how applicants can make a claim and the deadline by which claims must be filed to be considered.

In addition, CIRO may look to amplify the website posting through additional channels such as through social media channels and investor advocacy organizations.

PART 4

REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's ongoing responsibility to ensure that CIRO has correct and up-to-date information about the claim.

Under the Program, a claim may be denied if any of the following apply:

- the applicant makes a statement or provides information to CIRO in their application that is misleading or materially inaccurate or does not state a fact that is required to be stated or

that is necessary to make the statement or information not misleading;

- the applicant fails to promptly report any material changes to the information provided in their application, as a result of which the application materials on file with CIRO are materially inaccurate or misleading.

PART 5

CLAIMS PROCESS

Section 7 - Content of the notice of claims process

CIRO will publish a notice on its website explaining how applicants can make a claim. This notice will include important information such as the name of the proceeding in which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by CIRO. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, CIRO may set a period longer than 90 days depending on the circumstances of the case. For example, CIRO may establish a longer claims period if CIRO has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 8 - Claim requirements

The claim form will be available on CIRO's website. Applicants will be asked to provide the following information and documents to support their claim:

- applicant's name, address and contact information, and supporting identification documents;
- information about the claim, including:
 - the applicant's direct financial losses and the amount claimed;
 - how the applicant believes the contraventions that gave rise to the disgorgement

order directly resulted in the financial losses claimed by the applicant;

- any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
- any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
- the applicant's involvement in the misconduct, if any;
- whether CIRO has ever denied the applicant's claim for this or any other loss;
- documents to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to CIRO if there have been any changes.

In exceptional circumstances (e.g., in cases of elder abuse, mental incapacity, or where the applicant may otherwise be a vulnerable party), the administrator may accept non-standard documentation, and consider claims that have been submitted outside of prescribed filing periods.

No double recovery permitted

Double recovery may occur where a person receives funds from multiple sources for the same financial loss. This is not permitted under the Program. An applicant's claim under the Program will therefore take into consideration whether the applicant is eligible to receive, has already received, or intends to seek recovery, in whole or part, for the same claim from another source. An applicant must disclose all other proceedings and sources of actual or potential recovery of their losses to CIRO at the time that they make a claim under the Program, and must provide timely updates as to the status of their other claim(s). CIRO will take such information into consideration when determining applicants' eligibility under the Program and/or amounts of payment to the applicant.

As noted above, it is the applicant's responsibility to provide their best information so that CIRO can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, CIRO has sufficient information to assess the financial losses

sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by CIRO, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 9 - Determining eligibility and amount of payment

Subsections 9 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Policy, CIRO will make claim determinations under section 9 of the Policy.

CIRO may make a payment to the applicant if it is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, CIRO must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information that CIRO considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 9, CIRO must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the

disgorgement order;

- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

CIRO will communicate the outcomes of its determinations to applicants in writing.

Subsection 9 (4) - Prorated payments

CIRO will use the following formula to prorate payments under subsection 9 (4) of the Policy:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by CIRO under the order,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 9 (5) - Exception

CIRO may decline to make a payment to an eligible applicant if, in the opinion of CIRO, the amount of the payment would be too small to justify the costs of making the payment. While CIRO has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than \$50 per applicant will generally not be issued.

Section 10 - Reconsideration

Before CIRO denies all or part of a claim, an applicant will have an opportunity within 30 days of the notice to request a reconsideration of their eligibility or the amount of their prorated allocation under the distribution. A decision-maker, independent of the administrator, will conduct a review and respond to the reconsideration request within 30 days and before any final distribution.

Section 11 – No payment until all claims are determined

Subsection 11 (1) of the Policy provides that no payments shall be made until all claims filed under the Policy have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 11 (2) allows CIRO to make payments, including partial payments, to the remaining eligible applicants. In these cases, CIRO

will hold back the disputed claim amount.

Section 12 - Residual funds

Under section 12 of the Policy, approved claim amounts that CIRO is unable to distribute to eligible applicants after 180 days following the date payments are issued will be treated as other monetary sanctions.

Payments to applicants with approved claims will generally be deposited directly into the applicant's bank account, by way of electronic funds transfer (EFT) or wire transfers, as this represents the most secure and efficient mechanism for ensuring that approved applicants receive their payments. Distributions under the Program are not intended to be made by way of physical cheques. However, cheques may be issued in exceptional circumstances (i.e., primarily in cases of demonstrated hardship). If a cheque is not cashed within 180 days following its issuance, the applicant will no longer be entitled to receive the funds.

Section 13 - Appointment of an external administrator

There may be cases where CIRO does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, CIRO may appoint an external administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by CIRO, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

PART 6 ADMINISTRATIVE COSTS

Section 14 - Administrative costs of distribution

CIRO may incur costs in administering distributions of disgorged funds, such as, for example, costs of notices, banking fees, external legal costs and other miscellaneous costs. Administrative costs will not generally include costs of sanction collection and claim reconsideration.

The Policy provides that for each distribution, administrative costs will be paid:

- (1) first, from any monetary sanctions other than disgorgement received by CIRO; and
- (2) if any administrative costs remain or an external administrator is appointed, from the disgorged amount that is being distributed.

Monetary sanctions other than disgorgement include administrative fines or settlement payments. Administrative costs may also be offset, partially or fully, by interest earned on disgorged funds and any unclaimed disgorged funds.

In exceptional circumstances involving complex distributions that may require an external administrator, administrative costs may be covered from the disgorged amounts. The goal is, however, to preserve these funds, to the extent possible, for distribution to harmed investors.

PART 7 REPORTING

Section 15 - Reporting

The Policy provides that CIRO will publish a report no later than 60 days following the conclusion of each distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. CIRO will anonymize any such data.