

September 18, 2023

Submitted via Email

Attention:

Ontario Ministry of Finance
Agency Relations and Regulatory Policy Unit
Frost Building North, 4th floor
95 Grosvenor Street
Toronto ON
M7A 1Z1

RE: PROPOSED NEW REGULATION MADE UNDER SECTIONS 19(2)(B)(III) AND 36 (0.1) OF THE SECURITIES COMMISSION ACT, 2021 THAT PRESCRIBES ADDITIONAL PURPOSES FOR WHICH THE ONTARIO SECURITIES COMMISSION (OSC) CAN USE ENFORCEMENT MONEY

The Investment Industry Association of Canada (IIAC) is the national association comprising investment firms that provide products and services to Canadian investors.

The IIAC is an independent, constructive, and informed voice seeking to ensure healthy, growing, and compliant markets for investors.

Thank you for the opportunity to comment on the OSC's use of enforcement money.

We agree that the OSC should have modern information technology capabilities, robust data acquisition and data analytics, and be supportive of capital growth through innovation and capital formation.

A. The Limits on the Use of Enforcement Money

Enforcement money comprises of administrative penalties and disgorgement orders. The December 2021 Auditor General of Ontario Annual [Report](#) referenced in the proposal recognizes the OSC's inability to distribute enforcement money to harmed investors. It states:

- The money the OSC collects through sanctions more than tripled from \$38 million in fiscal 2016/17 to \$117 million in 2020/21. However, the fund in which this money is kept is not being fully used to benefit the investor community as allowed by the Securities Act (Act): it only paid out between 6% and 11% of the amount collected and accumulated in the fund for this and other purposes allowed under the Act, each year between 2016/17 and 2020/21. The OSC lacks the authority to

enact rules for distributing monetary sanctions collected to investors who have been harmed through unfair market practices or fraud, and has no overarching policy to, for example, compensate more of these investors or improve its education to investors.

B. OSC Capacities

The 2021 Auditor General of Ontario report also stated as follows regarding the OSC's capacities at that time:

- Some of the OSC's information systems are significantly outdated and are not interconnected, hindering the organization's ability to use data more effectively and efficiently to monitor and regulate market participants.
- OSC Staff face challenges in integrating information located in various databases and collected in different formats, to, for example, identify potential securities law breaches by issuers across the public and private or exempt capital markets areas (where companies qualify for exemptions from legislative requirements).

The OSC's financial statements for the year ended March 31, 2023 ([OSC's Financial Statements](#)) ('financial statements') show:

Total Assets:	\$456,051,469
Total liabilities:	\$312,962,822
Operating surplus:	\$143,088,647
Excess Revenue over Expenses:	\$ 9,709,046

Based upon these most current financial statements, the need to draw from enforcement money to fund information technology systems and data analytics is unclear.

C. Regulatory Impact: Third Party Charities and Financial Literacy Programs

The Analysis of the Regulatory Impact for this proposal states that additional purposes may be seen as diverting funds away from the OSC's Consolidated Revenue Fund. In considering this proposed new Regulation, we would encourage the Ministry of Finance and the OSC to also make broader use of s. 19(2)(b)(i) of the *Securities Commission Act*, which allows the allocation to and for the benefit of third parties. We encourage the Ministry and the OSC to consider third parties such as charities and external financial literacy programs, which may have less assets, revenues or surplus than the OSC, as appropriate recipients of enforcement money. This would have the benefit of enforcement money contributing to the greater public and public interest. Contribution to external financial literacy programs address the 2021 Auditor General of Ontario Report support for a policy to improve education to investors.

D. Governance and Transparency

The OSC's financial statements state:

Enforcement money totaled \$123,666,708, after the following payments were made:

Harmed Investors	\$142,796
Whistleblowers	\$481,092
OSC Recovery investor education/knowledge enhancement costs	\$4,638,029
Investor Education and Advocacy Organizations	\$1,662,687
External Collections firm	\$25,690
The following comprises the recovery of investor education and knowledge enhancement costs:	
Salaries and benefits	\$2,151,191
Professional Services	\$1,360,985
Media Campaign Costs	\$931,349
Website and other IT costs	\$567,728
Investor Advisory Panel Costs	\$138,154

The OSC has developed guidelines in determining how enforcement money may be allocated for investor education and knowledge enhancement costs (s. 19(2)(b) (ii) of the *Securities Commission Act*) and has recognized that it exercised judgment in evaluating the types of costs which would be in accordance with these guidelines.

These guidelines may be expanded to include the selection of and allocation to third party charities and financial literacy programs pursuant s. 19(2)(b)(i) of the *Securities Commission Act*, to help inform the necessary and difficult exercise of judgment.

The OSC guidelines in current and any expanded form should be made public and subject to public commentary. Transparency supports the public gaining a more meaningful awareness of the OSC's considerations.

Respectfully submitted,

Investment Industry Association of Canada