

January 20, 2025

Submitted via Email

Attention:

General Counsel's Office
Canadian Investment Regulatory Organization
2600-40 Temperance Street
Toronto, Ontario M5H 0B4
E-mail: GCOcomments@ciro.ca

Dear Sir/Madame:

RE: REQUEST FOR COMMENTS ON NEW SRO PROPOSAL FOR DISTRIBUTING FUNDS DISGORGED AND COLLECTED THROUGH NEW SRO DISCIPLINARY PROCEEDINGS TO HARMED INVESTORS

The Investment Industry Association of Canada (“**IIAC**”) is the national association representing investment firms that provide products and services to Canadian retail and institutional investors. The IIAC appreciates the opportunity to respond to CIRO’s request for comments (the “**Request for Comments**”) on its proposed framework for Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors (the “**Proposal**”).

OVERVIEW OF POSITION:

The IIAC generally supports CIRO’s Proposal, which will allow investors to seek redress for losses incurred as a result of breaches of securities law.

We are, however, concerned by the limited scope of the Proposal which applies to funds received by CIRO in payment of disgorgement orders but does not apply to payments received by CIRO in respect of settlement agreements or administrative penalties. As such, the Proposal will only allow harmed investors to recover in the limited circumstances in which a respondent is ordered to disgorge ill-gotten gains, the respondent complies with the disgorgement order, and the amount of the disgorgement order is sufficient to offset the financial losses that investors have incurred as a result of the respondent’s misconduct.

We believe that the limited scope of the Proposal will negatively impact its effectiveness as a tool for investor redress. Our concerns and recommendations are detailed below.

DETAILS OF CONCERNS:

Settlement Payments

CIRO's Proposal does not appear to include the distribution of funds that are paid to CIRO in satisfaction of approved settlement agreements. Given that settlement agreements may require a respondent to disgorge fees, commissions, and other ill-gotten gains to CIRO, it follows that the payment of those amounts ought to be included in CIRO's distribution framework.

A significant number of CIRO proceedings are resolved by way of approved settlement as opposed to a decision on the merits and account for a notable proportion of the funds that are paid to CIRO. As such, the exclusion of settlement payments from CIRO's Proposal may impact the Proposal's effectiveness.

Administrative Penalties

We are also concerned that CIRO's Proposal restricts the amount of funds that will be made available to harmed investors by drawing an arbitrary distinction between disgorgement orders and fines. As noted in the Request for Comments, monetary fines and disgorgement orders are distinct from restitution and are not calculated on the basis of third-party loss. Despite this, CIRO's Proposal includes the distribution of disgorgement orders but excludes the distribution of monetary fines.

The Request for Comments acknowledges that the "logical extension" of CIRO's Proposal is to allow for any monetary sanction – whether a fine or disgorgement order – to be distributed to harmed investors. The Request for Comments further acknowledges that expanding the scope of the Proposal to include fines may allow investors to recover where the amount of a disgorgement order is insufficient to offset investor loss. The same observations were made by [several commentors](#) in response to CIRO's initial request for comments on its proposal for distributing funds to harmed investors included in Notice 23-0010. However, CIRO has not satisfactorily explained its reasons for excluding fines from the Proposal:

- CIRO notes that "using regulatory fines to compensate investors risks shifting the focus of enforcement proceedings from regulatory prosecution to investor compensation". It is not clear how distributing fines would create such a risk but distributing disgorgement orders does not. In any case, CIRO has repeatedly stated that, as part of its Proposal, the administrative process for distributing funds to investors will be kept separate from CIRO's enforcement functions, which undermines the proposition that CIRO's enforcement function will be distorted.
- CIRO states that including fines in its Proposal may "create confusion for investors in terms of their compensation options". It is not clear how allowing CIRO to distribute amounts paid from fines as opposed to disgorgement orders would create confusion among investors. In any case, CIRO has emphasized the importance of providing eligible investors with notice of the contemplated claims process and raising investor awareness on the Proposal. Those efforts would minimize if not eliminate any risk of creating confusion among investors.
- CIRO notes that, according to its collection priority scheme, payments received from respondents are applied to disgorgement orders before monetary fines. However, this does not account for the fact that a respondent may be ordered to pay a fine but not a disgorgement order. Similarly, this explanation does not account for scenarios in which a respondent pays the full amount of a disgorgement order and fine, but the amount of the disgorgement order alone is insufficient to cover the losses incurred by eligible investors.

The amount and frequency of disgorgement orders as compared to fines may vary from year to year. As such, the exclusion of fines from the Proposal may negatively impact the effectiveness of the Proposal.

RECOMMENDATION:

For the above noted reasons, the IIAC recommends that CISO amend its Proposal to include the distribution of: (a) payments made pursuant to the terms of approved settlement agreements; and (b) payments made in respect of monetary fines. These amendments will greatly improve the scope and effectiveness of the Proposal.

We are happy to discuss the issues raised in this letter in further detail.

Respectfully submitted,

Investment Industry Association of Canada