



VIA E-MAIL: comments@osc.gov.on.ca

October 9, 2024

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 419-593-8122

Re: Request for Comments – Proposed Rules to Modernize the Process to Distribute Disgorged Amounts to Harmed Investors

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments on the Ontario Securities Commission's (**OSC**) Request for Comments on Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders*; Proposed OSC Rule 11-503 (*Commodity Futures Act*) *Distribution of Amounts Paid to the OSC under Disgorgement Orders* and related Companion Policies (the **Proposed Rules**).

PMAC represents over [330 investment management firms](#) registered to do business in Canada as portfolio managers with the members of the Canadian Securities Administrators (**CSA**). PMAC's members encompass both large and small firms and manage total assets in excess of \$3.5 trillion as fiduciaries for institutional and private client portfolios.

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection and benefit the capital markets as a whole.

PMAC agrees with the policy rationale of the Proposed Rules and welcomes the creation of a process that would increase distributions of disgorged amounts to the investors who have been harmed by sanctionable conduct. PMAC believes the Proposed Rules are a positive development for investors but could be improved upon to further protect investors by providing wider notice of any disgorgement order and allocating any undistributed amounts to administrative costs of future distributions.

KEY RECOMMENDATIONS

- 1. Require notice of claims process to be disseminated to all potentially eligible applicants**
- 2. Allocate undistributed disgorged amounts for use to pay administrative costs for distribution of future disgorgement**
- 3. Commit to a review of payment of administrative costs to ensure disgorgement proceeds are an appropriate source of funding**

DISCUSSION

PMAC supports the implementation of the Proposed Rules and in particular the OSC's commitment to develop plain language resources to assist investors in understanding the new statutory distribution framework. PMAC encourages the OSC to widely disseminate those resources, through its various communications channels.

PMAC recommends that the OSC strengthen investor protection by informing as many investors as possible about any claims process, and ensuring to the greatest extent possible that the administrative costs of any distribution are funded from sources other than the disgorged amounts.

1. Provide Wide Notice of Claims Processes

As drafted, the Proposed Rules contemplate that notice of any claims process will only be posted on the OSC's website. The Proposed Rules also contemplate that the final day to file a claim may be as soon as 90 days from the date the notice is posted on the website. Given the short period proposed to file a claim, PMAC recommends that the notice be disseminated much more broadly to allow all investors who were harmed by the conduct at issue to participate in the claims process. Wider dissemination would increase investor protection, and perhaps more importantly, would increase investor awareness and confidence in the claims process; investors with valid claims who miss the filing deadline because they did not regularly review the OSC's website would likely (and understandably) be disappointed that they were not proactively informed of the process.

PMAC recommends that where the party subject to a disgorgement order is registered under the *Securities Act*, the OSC should provide a link to the notice of the claims process on the OSC's website and require the party to directly inform all known investors of the disgorgement order. . The OSC has the power to require registered persons to make such a communication under its general power to prescribe "requirements in respect of the disclosure or furnishing of information to the public", set out in paragraph 143(1)7 of the *Securities Act*.¹

¹ *Securities Act*, R.S.O. 1990, c.S.5 [***Securities Act***], [s. 143\(1\)7](#).

Where the party subject to a disgorgement order is not registered, PMAC recommends that the OSC obtain the identities of investors through its investigative powers to inquire into the affairs of any person or company under paragraph 11(3)(a) of the *Securities Act*.² Then, the OSC should provide notice of the disgorgement and claims process to those investors directly. In our view, such an investigation and provision of notice would further the “due administration of Ontario securities law or the regulation of the capital markets in Ontario”, one of the two purposes of an investigation under section 11.³

In all cases, the OSC should avail itself of its additional communication platforms to distribute the notice widely. For example, the notice should be shared on social media platforms, by news release and through the OSC’s email alerts.

2. Allocate Undistributed Amounts to Future Administrative Costs

The Proposed Rules do not require distribution of disgorged amounts recovered where the sanctioned conduct is related to insider trading. The Proposed Rules also contemplate that there may be some disgorged amounts that are too low to justify incurring the administrative costs of distribution. Further, even where a claims process is established, it is likely that not all disgorged amounts will be fully distributed. Accordingly, over time, the OSC will likely accumulate a significant amount of money recovered from disgorgement orders.

PMAC recognizes the OSC’s discretion under the *Securities Commission Act, 2021* to allocate funds it receives towards certain uses, including towards administrative costs of distribution of disgorged amounts (following the proclamation of the proposed amendments to the *Act*).⁴

However, no provision of the Proposed Rules requires that undistributed amounts be allocated in any specific way. To ensure that the administrative costs of a particular distribution are borne as little as possible by investors harmed by the sanctionable conduct, PMAC recommends that the OSC be required to allocate all undistributed amounts toward the payment of the administrative costs of future distributions or other investor protection initiatives.

² *Securities Act*, [s. 11\(3\)\(a\)](#).

³ *Securities Act*, [s. 11\(1\)\(a\)](#).

⁴ *Securities Commission Act, 2021*, S.O. 2021, C. 8, Sched. 9, [s. 19\(2\)](#), as amended by *Building a Strong Ontario Together Act (Budget Measures), 2023*, S.O. 2023, c. 21, [Sched. 11](#).

3. Commit to a Review of Administrative Cost Funding to Reduce Burden on Investors

PMAC is encouraged by the “waterfall” funding model set out in section 15(2) of the Proposed Rules, which requires administrative costs to be paid first from penalty or settlement funds received by the OSC in relation to the sanctionable conduct, then from previously allocated funds for administrative costs, then finally from the disgorged amount that is the subject of the distribution. PMAC agrees that to the greatest extent possible, the costs of distribution be satisfied from any penalty or settlement amounts.

However, it remains unclear what amounts investors will ultimately pay toward administrative costs under the Proposed Rules; it is possible that investors will pay more to administer distributions than intended. PMAC welcomes the distribution reporting required by the Proposed Rules, which should over time provide clarity about the costs of claims processes. In addition to the required reporting, PMAC suggests that the OSC commit to a periodic review of completed claims processes to determine whether disgorged amounts are an appropriate source of funding for the claims process, or whether other sources of income should be allocated for that purpose.

CONCLUSION

We are pleased that the OSC intends to implement a framework to return disgorged amounts to harmed investors, and believe investors could be further protected if they receive wide notice of any claims processes and distributions are funded as little as possible from disgorged amounts. If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 802-4347.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

“Katie Walmsley”

Katie Walmsley
President

“Warren M. Rudick”

Warren M. Rudick
Director
Chair of Industry, Regulation & Tax Committee;

Chief Counsel, Wealth and Asset Management
Canada,
& Global Chief Counsel, Distribution Law,
Manulife Investment Management