Appendix A

Summary of Comments Received in Response to Notice 23-0010 and CIRO's Responses – Rules Notice – Request for Comments – Proposal on Distributing Funds Disgorged and Collected through New SRO (now CIRO)[1] Disciplinary Proceedings to Harmed Investors

On February 1, 2023, New SRO issued Notice 23-0010 requesting comments on our proposal on Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors (the **Proposal**).

We received 7 comment letters from the following commenters:

Advocis
CIRO Investor Advisory Panel
The Canadian Advocacy Council of CFA Societies Canada
FAIR Canada
Ken Wheelans
Kenmar Associates
Yves Robillard

Copies of the comment letters are publicly available on CIRO's **website**. We thank all commenters.

The following table sets out a summary of the comments received and our responses.

Summary of Comments	CIRO Response
General Comments	
Most commenters expressed support for and commended CIRO's efforts to ensure disgorged funds are distributed to harmed investors, as set out in the Proposal, emphasizing that a mechanism for distributing disgorged funds to investors would strengthen CIRO's investor protection mandate and enhance investors' sense of trust in financial regulation and the industry.	Thank you.

[1] New SRO changed its name to Canadian Investment Regulatory Organization (**CIRO**) on June 1, 2023.

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Commenters emphasized that Investment Dealer and Partially Consolidated Rules (**IDPC Rules**) and Mutual Fund Dealer Rules (**MFD Rules**) should be harmonized and the MFD Rules explicitly include disgorgement as an identifiable sanction.	We have proposed to align the IDPC Rules and the MFD Rules so that disgorgement (i) is explicitly included as a sanction and (ii) applies to all CIRO Dealer Members, including mutual fund dealers. We published the proposed amendments for comment on April 18, 2024 as part of our **Rule Consolidation Project - Phase 3**. We also welcome comments on the proposed amendment as part of this consultation.
Some commenters questioned whether the Proposal in the current form would have a sufficient positive effect to justify its adoption given the costs in administering a program of this nature.	We have considered the costs and benefits of the proposed program and determined that the benefits of improving investor protection outweigh the costs of administration and distribution of funds to harmed investors. We are not creating a new compensation program. Instead, we are proposing to build a *disgorgement distribution* program using CIRO's existing structure and resources, including current hearing panels' processes and CIRO's organizational setup. After considering the administrative costs and the program's impact on investors and the industry, we have concluded that it will have a net positive effect by enhancing investor protection and market integrity without adding significant costs. Please see **Appendix B – Impact Assessment**. To monitor and ensure the efficacy of the program, we are proposing to conduct regular reviews of the program following its implementation.
Some commenters raised concerns that the addition of yet another regulatory process may further complicate an already well-saturated selection of redress options for investors and may create confusion as multiple processes work towards compensating for the same underlying misconduct. Commenters noted that it would be difficult to see what value the Proposal adds if the Ombudsman for Banking Services and Investments (**OBSI**) receives the ability to issue binding decisions, especially given the proposed prohibition on double recovery and the requirement to disclose and accept associated limitations of claims for	As stated above, we are not proposing to create a restitution program to compensate investors for their losses. As described in the Proposal, there is an important legal and practical distinction between *restitution* and *disgorgement*. The proposed *disgorgement distribution* program would be distinct from the restitution options. The goal of the proposed program is to enhance investor protection and deter misconduct in the industry by distributing disgorgement

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amounts obtained elsewhere.	(e.g., wrongfully obtained gains) collected through CIRO Enforcement proceedings to harmed investors rather than providing restitution. Disgorgement distribution programs have been successfully used by other financial regulators in Canada and internationally. We plan to address any potential confusion about investor recovery options through clear communications and mapping out all options available for investor redress. Please see below on how we propose to deal with the issues of a potential overlap and parallel proceedings.
CIRO Enforcement Practices	
CIRO's Powers to Disgorge & Current Enforcement Practices	
Commenters noted that the length of the cycle time of the CIRO enforcement process can exceed 2 years and asked to clarify the timeframe for enforcement proceedings, sanction hearings and distribution of disgorged funds, adding that any process improvements CIRO can do to reduce enforcement cycle time would make the disgorgement distribution program more impactful and enforcement more credible.	CIRO Enforcement continually strives to advance all cases as quickly as possible while being thorough and diligent, ensuring both the public's need for a quick process and the rights of respondents to a fair hearing. Enforcement also prioritizes making the proceedings accessible to impacted clients and the public. We confirm that the disgorgement distribution process will only be possible after the completion of the enforcement proceedings and successful collection of the funds.
A commenter suggested that since commissions and fees are typically shared between advisors and firms, the amount of disgorgement ordered by hearing panels should include the full amount, i.e., ill-gotten gains received by the advisor and any improper fees and commissions retained by the firm resulting from the misconduct committed by the advisor.	Hearing panels may make disgorgement orders only against respondents named in the proceeding before them, i.e., where a firm is named as a respondent along with an individual advisor, disgorgement orders may be made against both; where a firm is not named as a respondent, a hearing panel cannot make a disgorgement order against the firm. CIRO Enforcement may prosecute, in appropriate cases, both the advisor and the firm based on the misconduct and will continue to use their prosecutorial

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	discretion to pursue such cases.
A commenter noted that, given that most enforcement matters are resolved by settlement agreements, investor compensation should be a key consideration when deciding to enter into such agreements.	Investor compensation has always been, and remains, a key consideration for CIRO Enforcement when negotiating settlements. Regardless of the Proposal, settlement agreements will continue to include, where possible, terms on repayment of investors' losses.
Collection of Funds	
Several commenters noted that CIRO should prioritize collection and payment of disgorged funds over its collection of fines and costs. This prioritization will have a superior deterrence impact and would be in the public interest.	Thank you. We agree to some extent. CIRO operates on a cost-recovery basis. Where CIRO collects an amount from a respondent in disciplinary proceedings, CIRO allocates amounts collected through disciplinary proceedings first to its costs, including the costs of collection. The intent of the Proposal is to prioritize the allocation of further payments/collections to disgorgement, which will be available for distribution to harmed investors. The collection of fines will remain important but will follow the allocation of the collected funds to costs and disgorgement.
Commenters recommended that CIRO conduct a review of its collection program, consider what other measures could enhance the timeliness and rate of collections, develop innovative solutions, including working with governments and other regulators to strengthen collections, and provide more transparency in its Enforcement reports about the collections process as low collection rates or long delays collecting funds may undermine the program's perceived utility and success.	CIRO has the power to collect disgorged funds across all Canadian provinces. We currently collect 100% of sanctions from current registrants and make all reasonable efforts to collect from former registrants. We work with an external entity who specializes in collection and have a robust oversight and tracking of the collection process and status.
One commenter recommended that if, for example, 180 calendar days passed since a CIRO hearing panel decision and the funds under a disgorgement order have not been collected and/or CIRO does not intend to pursue collection in court, the disgorgement shall be deemed to be uncollected. The disgorgement would thereafter not be part of the	Cases where no amount can be collected will not be part of the distribution program. If only parts of the disgorged funds are collected, a case might be considered for a distribution. The decision to close a case will depend on the likelihood of further collections and CIRO's ability to effectively manage the distribution. Setting the

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distribution program.	same timeline for all cases would be unpractical given particular circumstances of each case and a variety of collection tools. Rather, we propose that decisions be made on an individual basis by the program administrator (**Administrator**). Investors may choose not to participate in CIRO's distribution and may seek to recover their losses through other means, such as civil courts or mediation, while CIRO proceedings and collection efforts are ongoing.
Commenters assumed that CIRO would keep the collection and distribution functions in-house. Some felt that a better solution would be to consider outsourcing the collection functions to a third party such as a collection agency.	We currently work with an external entity to collect sanctions, including disgorgement, and intend to continue with that practice under the Proposal. Once collected, the disgorged funds will be administered and distributed to harmed investors by the Administrator. Based on the historical case data (see updated **Schedule** to the Proposal), we anticipate that, in most cases, the amounts available for distribution would be on a lower scale and could be administered by CIRO in-house. We may consider outsourcing the administration of a distribution in exceptional cases (e.g., complex distributions, involving high amounts and a large eligible investor class), where the outsourcing costs and fees would not significantly detract from the disgorged amount. We anticipate such cases to be rare. An assessment will be conducted on a case-by-case basis and reassessed once the distribution framework is fully developed and tested.

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Separation of CIRO Enforcement Process from Distribution of Funds	
Most commenters agreed that it is important for CIRO's enforcement process to focus on prevention and deterrence of misconduct rather than investor compensation and emphasized the necessity of the separation between enforcement processes and distribution of disgorged funds to ensure the integrity of the enforcement process.	Thank you for your comments. We agree. As set out in the Proposal, we intend to keep the role of CIRO Enforcement separate from the distribution process, which will be conducted by a separate group, i.e., the Administrator. Enforcement aims to promote compliance by sending strong regulatory messages that deter potential wrongdoers and build investor confidence in Canadian capital markets. For that reason, it is important that the role of Enforcement remains distinct and separate from the Administrator's role in charge of a distribution of funds.
One commenter noted that only victims of specific allegations that are proven (or admitted) in CIRO enforcement proceedings would be eligible for a distribution, and this consideration will probably bleed over into the enforcement process, potentially impacting the scope of charges CIRO's Enforcement staff decide to bring and the kinds of penalties they seek.	CIRO Enforcement aims to prevent misconduct and deter future violations. The nature and scope of enforcement cases will continue to be determined by the evidence and circumstances of each case. The distribution process will be separate from enforcement actions. While individual investors affected by the misconduct may receive some disgorged funds, if collected, this will not shift the primary focus of CIRO Enforcement.
Several commenters noted that it is neither necessary nor desirable to require investors to participate in CIRO enforcement proceedings to be eligible for compensation. Whether or not impacted investors complained to CIRO or provided witness testimony at a disciplinary hearing, these investors should be eligible to receive payments under the program. Commenters also noted that the Proposal's recommendation that investors be limited (i) to those who suffered a direct financial loss because of the violation and (ii) by the parameters of a particular enforcement action, is reasonable, but the correlation may not always be easy for hearing panels to validate. The commenters concluded that	We agree and have proposed that the disgorgement distribution program will be open to all investors harmed by the misconduct, not just those who complained and/or testified in CIRO enforcement proceedings. It may be unnecessary and impractical to call all harmed investors as witnesses in a disciplinary proceeding. CIRO Enforcement will be able to maintain prosecutorial discretion to decide which witnesses to call to prove a case. To the extent possible, based on the evidence collected through the investigation, CIRO Enforcement will evaluate the scope of investor harm and present relevant evidence to hearing panels when seeking disgorgement orders. A disgorgement order may not set out an

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they expect CIRO to err on the side of the investor where a legitimate question arises.	exhaustive list of all eligible investors. The eligible investor class will be based on the parameters set out in the disgorgement order, and individual eligibility would be determined at the distribution stage by the Administrator.
One commenter noted that the proposed severance of the disgorgement distribution process from the enforcement process will create a duplicative burden for investors and will add an additional strain by bifurcating investors' interactions with CIRO, requiring investors to provide documentation and other evidence to investigators and enforcement counsel as part of the enforcement process while also being required to liaise with the program Administrator and submit separate documentation to substantiate their loss claims.	We do not anticipate that investors who participate in enforcement proceedings, by either providing evidence at an investigation stage and/or testifying in disciplinary proceedings as witnesses, will have any significant burden at the disgorgement distribution stage. We have proposed a separate process for disgorgement distribution (as set out in the Proposal and below) to allow all other affected investors to partake in the distribution process and will take steps to minimize any burden to ensure a fair, accessible and equitable process.
Program Administration	
Administrator	
Several commenters agreed that the program Administrator role should be outside of CIRO Enforcement and not staffed by CIRO's Enforcement department.	Thank you. We agree and propose that the Administrator role be separate from CIRO Enforcement and carried by the CIRO General Counsel's Office.
Commenters noted that administering the disgorgement distribution program would require dedicated resources to execute it effectively and encouraged CIRO to plan well in advance of the first claim being received to ensure it has the resources it needs.	Thank you for the feedback. We anticipate that the disgorgement distribution program will be administered by a dedicated team within the General Counsel's Office supported by technology, finance and communication resources, liaising with the Office of the Investor on investor education and resources about the program and other recovery options. The Administrator will deal with investors directly and rely on CIRO's existing groups for an in-house administration of claims and distribution of funds.

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One commenter questioned whether the number of investors who are likely to access the program justifies a creation of a new independent department to administer the program.	Please see above. We do not propose to create a new department but to rely on the current CIRO organizational structure to administer the program.
One commenter suggested that a separate group be established as an Administrator and linked closely to the Office of the Investor, to best enhance accountability and align with investors' interests.	We agree. Please see above on the proposed structure of the Administrator. The role of the Office of the Investor will be aligned with its mandate, which includes investor education and research. As such, the Office of the Investor will provide resources about the program and investor recovery options more generally and connect investors with the Administrator where needed.
A commenter asked for more information about the role of the Office of the Investor, particularly whether the Office of the Investor will serve in an advocacy capacity for investors.	Please see above on the role of the Office of the Investor. We do not propose that the Office of the Investor engage in investor advocacy for the purposes of the program.
Another commenter disagreed that the Office of the Investor should act as a liaison between the Administrator and investors and recommended that the Administrator deal with investors directly to simplify the administration and reduce costs.	This recommendation aligns with the Proposal. Please see above for more details.
Program Materials and Investor Education	
Commenters recommended that CIRO include a component in its investor education program to describe the various dispute resolution and compensation models available to Canadian investors.	Thank you for the comment. CIRO already has several resources, including an investor brochure and a **webpage** that set out various dispute resolution options. We plan to update and further enhance these materials as new developments occur.
Commenters also recommended that the disgorgement distribution program materials manage expectations about what the program can achieve given that, in practice, investors may receive relatively small amounts of disgorged funds relative to their losses.	Thank you. We agree. It is very important to manage expectations about this program given its limitations. As set out in the Proposal, we do not intend to create a restitution program to compensate investors for their losses. Rather the Proposal builds on CIRO's current processes for disgorgement of ill-gotten funds. As a result,

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	the distribution of disgorged funds to investors will not be based on the amount of investors' losses but rather the financial benefits received (or losses avoided) by an advisor or a firm who breached the CIRO Rules. It will also depend on CIRO's ability to successfully prosecute the wrongdoings and collect on disgorgement orders. Investors therefore may not receive full compensation of their losses through the disgorgement distributions administered by CIRO. Investors will not be precluded and could pursue full restitution in specialized investor compensation fora, such as civil courts, OBSI or arbitration.
Commenters suggested that educational materials should explain the meaning and intent of disgorgement and inform investors of their right to access disgorgement and how it may impact overall investor compensation. Defining the concepts of "*disgorgement*" and "*restitution*" early on will help investors set reasonable expectations for the program.	Thank you for these comments. We agree and, as outlined in the Proposal, believe the distinction between "*disgorgement*" and "*restitution*" is very important. We will reiterate and highlight that distinction and respective investors' rights to set the reasonable expectations through investor education and program materials.
Commenters recommended providing a toll-free phone line to take claims over the phone for those marginalized or underserved investors who do not have Internet access or who are unable to complete the forms themselves.	Thank you for these suggestions. We agree and intend to create dedicated resources and simple ways for investors to contact CIRO regarding the program.
Commenters noted that CIRO should conduct behavioural research to determine how to craft the disgorgement distribution program materials to enhance investor participation.	Thank you for your comment. We will consider it as part of the program design.
Claim Eligibility	
Several commenters concurred with the Proposal to define the class of potential investors eligible for the program to those who fit within the parameters of a particular enforcement action. They encouraged CIRO to	Thank you for your comment. We agree and will strive to identify eligible investors or at least a potential investor class as early as possible in the enforcement process (as discussed above, at the

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identify these investors as soon as practicable so the scope of the disgorgement exercise can be defined, ideally, at the investigative stage.	investigation and/or prosecution stages when evidence is collected, evaluated and presented to a hearing panel seeking a disgorgement order). As a practical matter, however, it may be difficult to identify all eligible investors at an early stage, particularly if complaints are received after enforcement proceedings are made public. We have therefore proposed to keep the eligible investor class open until an eligibility assessment is conducted at the distribution stage.
Notice to Investors and Public Transparency	
Commenters recommended that for all disgorgement distributions, public notice be provided in simple and plain language via CIRO's website and social media.	Thank you for these comments. We propose to provide public notices in all distribution cases. In cases where the eligible investor class is known in advance of the distribution, we propose to also provide direct notices. In addition, the information about available distributions will be publicly available on CIRO's website together with general information about the program, in plain language and step-by-step directions.
Other commenters noted that retail investors do not typically seek out public notices and questioned whether direct investor notices be made in all cases, including complex distributions.	We intend to provide direct notices, where possible, to all known investors regardless of complexities of the distribution. To ensure that investors are not missed due to changes in their personal circumstances and/or contact information, we propose to provide public notices in all cases.
A commenter suggested that CIRO dealers should be required to inform all affected clients, when a distribution is made from the disgorgement paid by the dealer or their representatives, which will empower investors to self-identify and participate in the distribution process.	Thank you. Depending on the information we may have about the affected investors and the size of the class and distribution, we may work with CIRO dealers to provide notices to affected investors.
Some commenters recommended sending multiple notices and, if no response is received to the initial notice, a second notice or contact	Thank you. We generally agree that efforts should be made to locate all known eligible investors who did not respond to a notice. CIRO's

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attempt with investors be made to increase the chances that the investors would see it and respond to it.	attempts to contact individual investors however may be limited by the information available about the investors. We are also mindful that the process should be efficient and fair to other investors and should not unreasonably delay the distribution.
Given CIRO's public interest mandate, commenters recommended the inclusion of information about the effectiveness of the program, including challenges and successes, in CIRO's annual enforcement reports, noting that a lack of transparency could undermine public confidence in the program and the regulatory regime.	Thank you, we intend to conduct regular reviews of the program and include information about the program on CIRO's website and annual publications. We also intend to publish a pending distributions list with references to specific disciplinary proceedings and hearing panels' decisions where disgorgement orders are made (without publishing affected investors' names).
Application Process	
Most commenters did not object to the idea that investors will need to apply to participate in the disgorgement distribution process. They noted however that every effort must be made to make the application process as easy to execute as possible. Commenters recommended CIRO conduct identity verification, with other documentation (to prove the amount of the loss) being encouraged but not required.	Thank you. We agree and intend to establish a clear and simple process where investors need to opt in to receive the funds upon verification of identity and eligibility (if seeking recovery in other proceedings). Where investors' losses are known to CIRO, investors will not be required to prove them. There may be cases where investors' entitlement is not evident from CIRO's records, and which may require further verification.
Commenters recommended that the requirement to provide documentation to prove the amount of the loss be encouraged, but not required, as it could be difficult for investors who are unsophisticated and who often do not retain financial documentation. Instead, the Administrator could endeavor to independently verify investors' losses by accessing the firm's systems.	We intend to make the application process as straightforward as possible for investors to verify their identity and confirm the amounts of losses subject to a distribution. The Administrator will use simplified forms and help identifying documents confirming losses. Where CIRO has evidence of investors' losses collected through enforcement proceedings and/or through CIRO dealers, we anticipate this process will be very straightforward.
One commenter suggested that the Administrator should distribute the funds to investors at the time of notification, without investors having	We considered this approach and, given that we propose to keep the distribution process open to all affected investors (i.e., not limiting

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to file a claim.	the program to investors who participate in enforcement proceedings), we may not have information about all affected investors at the notice stage. As discussed above, we intend to make the application and verification process accessible and straightforward.
Several commenters recommended a longer timeline for investors to opt into the program than 30-90 days, suggesting not less than 90 and up to 120 days.	We have considered various timelines used by other regulators. Rather than setting a fixed timeline for all cases, we propose to establish timelines on a case-by-case basis depending on the complexity of a particular distribution, *i.e.,* the amount of the funds, the size of the class, location of class members (in Canada or outside), our ability to give effective notices etc.
Claim Assessment	
Commenters recommended that a standardized methodology and documentation be established by the Administrator for the review of claims.	Thank you. We agree with these recommendations. We intend to implement a simplified methodology where investors' losses are known (or could be verified based on the records available to CIRO) and offer a facilitated application process for all investors. The methodology will be based on the amount lost by an investor because of the misconduct (e.g., fraud, misappropriation, or unauthorized fees or commissions paid to the advisor and/or firm) within a set period (based on the parameters of a particular disciplinary action). The assessment will also consider whether the claimant benefited from the misconduct. The amounts will not include any market-driven losses, lost opportunity costs, interest on losses or non-financial losses. Lastly, as discussed below, it will also consider if the claimant received any compensation for their losses arising from the same misconduct from any other sources.
One commenter suggested that the advisor or the firm, who was ordered to pay disgorgement and paid it, should be given legal	The proposed program is distinct from compensation processes where respondents may have standing. We have proposed to

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standing to intervene in the claim assessment and distribution process with rights to provide observations and eventually dispute the claim or the proposed distribution of the funds, explaining that the assessment of a claim and the way the funds are distributed may have a direct impact on the financial exposure of the advisor or the firm in the context of civil legal proceedings, arbitration or other process initiated by a claimant.	address potential double recovery through declarations and verifications. At the point of an investor's filing a claim, they would be required to disclose any parallel proceedings and amounts of recovery already received elsewhere. Where losses are covered in other proceedings, investors' claims from disgorged funds would be disallowed or reduced accordingly.
Commenters suggested the Administrator advise claimants whether their claim is accepted and the amount they will receive via the same means of communication the claimants have used.	Thank you for your comment. We agree.
Internal Reconsideration	
Commenters recommended CIRO consider what mechanism it will use to allow claimants to request the Administrator reconsider the amount of their entitlement, e.g., would this review be carried out by CIRO staff that made the initial determination or independently of the initial review, suggesting that it may be appropriate in some circumstances (e.g., large number of disputed claims, large dollar amounts) to consider a degree of third-party involvement in the review through establishing a disgorgement claims review committee.	We have proposed that a claimant may request a reconsideration of the Administrator's determination if their claim is rejected, or if they disagree with the Administrator's determination of their entitlement. We believe an internal reconsideration mechanism would create a more robust and fair process. We anticipate that it will be an internal process, initiated at the request of the claimant and conducted by a CIRO employee who was not involved in the initial determination. We may consider third-party distribution and reconsideration processes in complex cases.
A commenter recommended that the time for an internal reconsideration be increased from 30 to at least 90 days.	We considered a longer period for investors to request a reconsideration but remain concerned about unnecessarily delaying the distribution process for all affected investors. Instead of setting a fixed timeframe for all cases, we propose to determine appropriate timelines for reconsideration on a case-by-case basis allowing exceptions where longer timelines are desirable and appropriate.

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Treatment of Disgorged Funds in the CIRO Restricted Fund	
A commenter stated that they are disappointed the Restricted Fund is reserved for the limited purposes enumerated in the Recognition Orders, which do not include payments to harmed investors.	CIRO is required to comply with the terms of its Recognition Orders and may only use the Restricted Fund for the purposes enumerated in the Recognition Orders. As stated in the Proposal, we can and intend to seek approvals from the Governance Committee and the CSA to extend the use of the Restricted Fund for the purposes of the proposed disgorgement distribution to harmed investors.
A commenter asked CIRO to clarify how the disgorged funds will be treated in the Restricted Fund in terms of their allocation and how the Proposal may impact the distribution of funds towards the purposes enumerated in the Recognition Orders, i.e., would fewer funds remain available for distribution for other purposes including, but not limited to, investor protection clinics and whistleblower programs.	We propose to segregate and set the disgorged funds aside within the Restricted Fund to preserve them for distribution to harmed investors. The disgorged funds will be further segregated per case to match the disgorgement orders. Generally, administrative costs will not be deducted from the segregated disgorged funds (but processed from the general Restricted Fund as discussed below). Given that we intend to rely on CIRO's existing resources and structure, we do not anticipate these administrative costs to be significant. In exceptional cases, where distributions could not be carried out in-house and require extraordinary costs, e.g., a court-appointed receiver or outside counsel to carry out a large distribution, the Administrator would have discretion to off-set such costs from the disgorged funds. If such extraordinary costs are drawn from the disgorged funds, they would have priority in the distribution process but will have to be accounted for and reasonable. Otherwise, funds held in the Restricted Fund for other purposes, including investor protection, education and research as well as

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	whistleblower and other programs, would not be affected by the disgorgement distributions.
Distribution of Funds	
Several commenters encouraged us to consider whether there would be appropriate circumstances where fines might also be used to provide compensation, particularly where a disgorgement order is uncollectable.	We have considered whether fines collected through CIRO disciplinary proceedings could be used for distribution to investors who suffered losses due to their advisor's or firm's misconduct. For policy and practical reasons discussed in the Proposal, we concluded that it would be problematic to use fines for investor compensation. Clear delineation between fines and compensation defines the roles and responsibilities of regulators as opposed to courts and other investor compensation options and is important to ensure effectiveness, transparency and accountability of the system. Significantly, using regulatory fines to compensate investors risks shifting the focus of enforcement proceedings from regulatory prosecution to investor compensation. It may also create further confusion for investors in terms of their compensation options, which currently include civil courts, arbitration and OBSI in most Canadian jurisdictions. Lastly, we note that, given the proposed collection priority, discussed above, the funds first collected (after costs) will go towards satisfying disgorgement orders; therefore, if disgorgement orders are uncollectable, fines will likely be also uncollectable.
A commenter recommended that *de minimis* thresholds for claim recognition and payment should be enumerated for clarity.	We generally agree that setting out *de minimis* thresholds (i.e., the lowest value above which the amounts become material) for claim eligibility and distribution under the program would be helpful. The goal is to strike a balance between ensuring a fair distribution of disgorged funds to harmed investors and the efficient administration of the program. For example, if an investor's entitlement under the

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	program is only $10, it will not be economical to administer the distribution given the administrative costs will likely be higher than the amount available for distribution. Different cases may have different *de minimis* thresholds, which will depend on such factors as the size of the funds and administrative complexity of a distribution, including anticipated administrative costs of notices, processing and verification of claims, proportionality, practicality, and feasibility of an efficient distribution. Generally, we anticipate that there could be cases where it would not be economical and practical to run the distribution process.
Commenters recommended CIRO to consider the payment mechanisms that would be offered to investors and the resources required to facilitate payment.	We anticipate using electronic payments to distribute funds to eligible investors.
A commenter asked for a clarification on the approach CIRO proposes to take for distributing funds between claimants on a *pro rata* basis, i.e., whether the *pro rata* distribution would be based to some degree on the total number of eligible claimants or as a percentage of each eligible claimant's losses, relative to the recognized total losses and the associated disgorged amount.	We anticipate that *pro rata* distributions would be triggered in cases where the money collected are insufficient to cover the total eligible losses under the disgorgement order issued by a hearing panel. In all cases, the Administrator will have discretion to decide if and when a distribution is appropriate. A distribution will only be appropriate when certain level of collection is achieved, and costs of a distribution justify carrying out the distribution. Administrative costs will not be generally deducted from the disgorged funds but rather covered from the general Restricted Fund to preserve to the fullest extent possible the funds available for distribution to harmed investors. In rare cases of external distributions, administrative costs may be deducted from the disgorged funds subject to the distribution. After the closing of the application process, the total amount collected and available for distribution will be shared in proportion to each claimant's losses relative to the total losses of all eligible

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	claimants. We believe this method is more appropriate than a simple distribution where all claimants receive an equal share regardless of the amount of their individual losses, as it ensures that claimants who suffered greater losses receive a larger proportion of the distribution, reflecting the principles of proportionality.
Administrative Costs	
Some commenters were concerned that the implementation of the Proposal could become significantly costly and asked for transparency and public disclosure of the accounting behind the disgorgement distributions.	We do not anticipate that the implementation costs and administrative costs of the program will be significant. For the implementation, we plan to rely on CIRO's existing resources and organizational structure, i.e., managing the program in-house through the General Counsel's Office and working with other CIRO groups to support the program (e.g., Finance, Public Affairs, Office of the Investor). Administrative costs of the program would likely include costs of providing notices to investors and administering a distribution. We anticipate that most of the administrative work, such as, e.g., assessment of claims and administration of payments, would be conducted in-house and would not result in any significant draw on the Restricted Fund.
Some commenters disagreed that administrative costs of the program be taken from the Restricted Fund, suggesting that CIRO's operating budget is a more appropriate source and stressing that drawing on the Restricted Fund to finance the program would leave less money in the fund for important investor protection initiatives. Other commenters argued, on the other hand, that the administrative costs should not be taken from CIRO's operating budget, which would disproportionally impact member fees and significantly increase the regulatory burden on all CIRO member-participants.	We have proposed that administrative costs be accounted for separately and normally taken out from the *general* Restricted Fund account to preserve the disgorged amounts in the Restricted Fund for distribution to harmed investors. We did not propose to take these costs from CIRO's operating fund because they do not constitute typical normal course operating expenses but will be necessary to operate a disgorgement distribution program. This use of the Restricted Fund aligns with its purposes among which is funding of investor protection initiatives.
Commenters generally agreed that if costs of distributing disgorgement	We agree with these comments and clarify that the Administrator

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is so high that the effort cannot be justified, CIRO should not pursue the distribution unless a particular case has a strategic investor protection value or messaging. Commenters asked for guidance on the circumstances and factors CIRO may consider determining whether administrative costs are prohibitively significant.	would have discretion not to pursue a distribution if administrative costs do not justify the efforts. To assess the prospects of a distribution, the Administrator will consider such factors as the total amount of disgorged funds collected and available for a distribution, the number of eligible claims and their total and individual value, the location of claimants, and feasibility of an effective notice and payment processing.
Parallel Proceedings	
Commenters agreed that investors who receive a payment through the disgorgement distribution should be able to seek fuller compensation through other avenues.	Thank you. The Proposal aligns with these comment.
Several commenters agreed that investors should not be entitled to double recovery and supported the requirement to disclose and deduct any amounts received resulting from the same misconduct.	Thank you. The Proposal aligns with these comment.
Given the distinction between restitution and disgorgement, one commenter questioned why investors' civil claim/complaint compensation demands would need to be limited by any amounts received through disgorgement and why disgorgement payment eligibility, a wrongdoer-focused remedy, should be curtailed by amounts received as restitution, an investor claims/compensation-focused remedy and suggested that both processes remain distinct and free from the limitations proposed.	Although disgorgement and restitution are different —disgorgement removes ill-gotten gains from wrongdoers, while restitution aims to return affected investors to their pre-misconduct financial state — distributing disgorged funds still reduces investors' losses. To ensure fairness and prevent double recovery, any amounts received through disgorgement should be offset when calculating their recovery in civil lawsuits. This prevents investors from benefiting twice from the same loss and ensures wrongdoers do not escape financial responsibility. Therefore, preventing double recovery is essential to maintain fairness and integrity in legal processes.
Commenters asked to clarify whether investors can bring simultaneous claims in multiple fora: for instance, pursuing a legal action or filing a claim with OBSI, while contemporaneously submitting an application for	Under the Proposal, investors may participate in simultaneous proceedings (i.e., opting in under the program will not stay parallel court, OBSI or arbitration proceedings). Instead, we have proposed

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disgorgement. This is important for consumers to better understand available redress processes. For example, OBSI requires investors to put a pause on any legal proceedings and only resume or initiate a legal action once OBSI has made a final decision.	to deal with potential double recovery through declarations and verifications. At the point of an investor's filing a claim, they would be required to disclose any parallel proceedings and amounts of recovery already received elsewhere. Their claim from disgorged funds would be disallowed or reduced accordingly where losses are covered in other proceedings. If other proceedings are pending resolution, investors would be required to provide updates on the status of other proceedings throughout the process and until the final distribution. Upon the distribution of the disgorged funds, investors will be required to attest to 1) not having received funds from other sources, and 2) having to disclose the amount of distribution received from CIRO in other proceedings. Following the distribution, investors will be required to disclose the funds received through CIRO's disgorgement distribution in other proceedings.
Commenters raised a potential overlap with OBSI services by questioning whether the compensation recommended by OBSI would make the investor ineligible for disgorgement distribution, commenting that it is highly possible that an OBSI compensation recommendation will be made well before a CIRO hearing panel decision and suggesting that investors receiving funds collected through disgorgement should be required to agree that they will deduct the disgorgement received from any future compensation resulting from the same misconduct.	Thank you. We generally agree with these observations. Any amounts received in compensation through OBSI recommendations should be deducted from the disgorgement distribution obtained from CIRO proceedings and *vice versa*, if the disgorgement award was made prior to OBSI's recommendation, the amount should be disclosed to OBSI and deducted from the recommendation made by OBSI to avoid double recovery.
A commenter stated that a claimant who receives funds from the program should acknowledge that it is in reduction of any claims made against the advisor and/or the firm to avoid any dispute under common law or civil law about whether a payment from a third party (derived	We agree with these comments and propose to deal with potential double recovery as discussed above. In terms of enforcement of the declarations, the parties to civil disputes involved in other fora will presumably be the same, they

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from a penalty) benefits to the defendant or not in the context of a civil claim, and prevent situations of double payment by a registrant. Commenters also asked for clarifications and guidance on the mechanisms that would be needed to require investors to disclose to all relevant parties any compensation they obtain through disgorgement distributions and how these declarations will be enforced.	therefore would be aware of any disgorgement payments made to CIRO and any outstanding civil, arbitration or OBSI proceedings. CIRO will also have an ability to conduct verifications in parallel arbitration or OBSI proceedings to prevent double recovery.
Comments on topics outside of the scope of the Notice 23-0010 consultation	
Several comments received fall outside of the specific scope of the consultation under Notice 23-0010. At a high-level, commenters made recommendations on the following areas: • There may be helpful resources and learning opportunities on claims administration from the Ombudsman for Banking Services and Investments (**OBSI**) and the Canadian Investor Protection Fund (**CIPF**). • The U.S. Securities and Exchange Commission's (SEC) **Report Pursuant to Section 308(c) of the *Sarbanes Oxley Act* of 2002** described several ways to help improve collections, such as written guidelines for staff on how to pursue collections, a collections tracking system etc. • Enhanced collection powers may be required for CIRO to develop innovative solutions to strengthen collections such as the British Columbia Securities Commission (**BCSC**) regime where a person's driver's license and license plates can be withheld if they fail to pay amounts owing to the BCSC. • Another way for CIRO to support investor compensation is to promote and ensure other avenues available to investors are as effective as possible, including encouraging CIRO members to abide by OBSI recommendations following an impartial and	We thank everyone for sharing their comments and recommendations on these topics. We welcome feedback from the public, even on matters that fall outside the scope of a specific consultation. Even though we did not respond to these comments, we took note and considered these recommendations as part of our continuous evaluation of the disgorgement distribution Proposal.

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independent review of complaints and supporting the proposal by the Canadian Securities Administrators (**CSA**) to create a binding mechanism for OBSI recommendations.	