OSC's new disgorgement framework will permit investors to recover losses

September 18, 2025

The Ontario Securities Commission's (OSC) final rules implementing a new framework that will enable the OSC to distribute funds that it collects under disgorgement orders to harmed investors came into force on September 1, 2025 (the Rules). The new Rules come at a time when the OSC is increasingly seeking disgorgement as a remedy for non-compliance with Ontario's *Securities Act*.

What you need to know

- Investors will soon have the possibility of recovering disgorged funds from the OSC.
- In order to recover disgorged funds, investors must provide proof of direct financial loss to recover funds. In other words, the OSC will not provide compensation for indirect damages, such as loss of opportunity, interest or non-financial losses.
- There are certain exceptions to mandatory distributions, including where the amounts are too small to justify distribution or where there is an ongoing appeal.
- Harmed investors will not receive payments until the OSC has reviewed all the claims filed and determined the amount to be paid to each applicant.
- Other jurisdictions, including British Columbia and Québec, already have similar frameworks for the distribution of disgorged funds to harmed investors in place.

Background

Disgorgement is a type of sanction that requires a respondent to repay any amounts they have obtained as a result of non-compliance with securities law or commodity futures law. Both the Capital Markets Tribunal and the Ontario Superior Court of Justice routinely impose disgorgement orders.

Under Ontario's current framework, harmed investors do not receive payments for their losses, even if disgorgement is ordered in disciplinary proceedings against their investment firm or advisor for breaching regulatory requirements. Rather, the OSC allocates the disgorged amounts towards various purposes, including the costs of enforcing orders.

Legislative amendments

In 2023, the Ontario government introduced Bill 146, which included amendments to Ontario's *Securities Act*, *Commodity Futures Act* and *Securities Commission Act, 2021*. These amendments allowed the OSC to create rules requiring that money received under a disgorgement order be distributed to harmed investors.

In July 2024, the OSC published a set of proposed rules for comment, setting out the process by which disgorged funds would be distributed to investors and the eligibility requirements for investors seeking a payment from disgorged amounts. The OSC made certain revisions to the proposed rules in response to stakeholder comments and released the final Rules on June 12, 2025.

Effect of the Rules

The OSC will display disgorgement orders it has obtained in enforcement proceedings on its website. Investors will then be able to register their contact information if they would like to be contacted about potential future distributions of funds collected under disgorgement orders. The website will also allow investors to see if amounts have been collected under a disgorgement order, whether the OSC has started a distribution, and how they can submit a claim.

Certain exceptions apply to the mandatory distributions including: (i) the distribution requirements will not apply where the deadline for filing an appeal of the decision giving rise to the disgorgement order has not expired or the appeal process is ongoing; and (ii) the OSC will not be required to distribute disgorged funds if the costs of administering the distribution would not justify making the distributions, given the amount received and the number of potential eligible applicants. If an exception applies and the OSC is not required to make a distribution, the disgorged amount belongs to the OSC and may be used for various purposes, including reimbursing the OSC for costs or for the benefit of third parties.

Investors will only be eligible to receive a payment from money received under a disgorgement order if they provide proof of direct financial loss and that loss can be quantified. The OSC will not provide compensation for loss of opportunity, interest on a financial loss or non-financial losses. Additionally, harmed investors will not receive payments until the OSC has reviewed all the claims filed and determined the amount to be paid to each applicant.

The Rules also provide that certain administrative costs related to distributions are eligible to be paid from the disgorged amount, including reasonable costs incurred by a third-party administrator in carrying out a distribution and reasonable costs incurred by the OSC in obtaining external advice relating to the distribution.

Finally, the OSC clarified that it will continue to use no-contest settlements and receiverships to return money to harmed investors, but that the new distribution process will provide the OSC with an additional tool for investor redress.

If you have any questions about the Rules and their application, please reach out to your usual BLG lawyer or one of the authors listed below.

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