



REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed Financial and Consumer Services Commission Rule CO-002 *Procedure for Distribution of Disgorged Funds* (the “**Proposed Rule**”) as set out in **Annex A**.

Introduction

On 30 March 2022, the Financial and Consumer Services Commission (“**Commission**”) approved publication in order to obtain comments on the Proposed Rule. The Proposed Rule will replace existing Local Rule 15-502 *Procedure for Distribution of Disgorged Funds* (“**Local Rule 15-502**”).

Substance and Purpose of Proposed Rules and Proposed Amendments

Local Rule 15-502 sets out the procedures for the Commission to follow to distribute the funds collected and the procedure for claimants who have suffered a financial loss as a result of the non-compliance under the *Securities Act*. It does not address the procedure for distribution of disgorged funds for disgorgement orders under other legislation. The Proposed Rule will repeal the securities specific Local Rule 15-502 and replace it with the rule to address the distribution of disgorged funds as a result of non-compliance with any financial and consumer services legislation. Orders for disgorgement are available under the following Acts administered by the Commission:

- *Collection and Debt Settlement Services Act*
- *Cooperatives Act*
- *Cost of Credit Disclosure and Payday Loans Act*
- *Credit Reporting Services Act*
- *Credit Unions Act*
- *Direct Sellers Act*
- *Insurance Act*
- *Mortgage Brokers Act*
- *Pension Benefits Act*
- *Pre-arranged Funeral Services Act*
- *Real Estate Agents Act*
- *Securities Act*
- *Unclaimed Property Act*

Contents of Annexes

Annex A: Proposed Rule CO – 002 *Procedure for Distribution of Disgorged Funds*

How to Obtain a Copy and Provide your Comments

The text of the Proposed Rule is included with this notice.

A paper copy of the proposed materials may be obtained by writing, telephoning or emailing the Commission. Comments are to be provided, in writing, by no later than 4 July 2022 to:

Corporate Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B.
E2L 2J2
Toll Free: 866-933-2222
Fax: 506-658-3059
E-mail: secretary@fcnb.ca

We cannot keep submissions confidential. Any submission received during the comment period may be disclosed in accordance with provincial legislation. A summary of the written comments received during the comment period may be published. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions

If you have any questions, please refer them to:

Ella-Jane Loomis
Senior Legal Counsel
Tel: 506-453-6591
Email: ella-jane.loomis@fcnb.ca

FINANCIAL AND CONSUMER SERVICES COMMISSION LOCAL RULE CO-002
PROCEDURE FOR DISTRIBUTION OF DISGORGED FUNDS

PART 1 INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Rule

“Act” means the *Financial and Consumer Services Commission Act*;

“Claimant” means any person who alleges suffering a financial loss as a result of non-compliance with New Brunswick financial and consumer services legislation; (*réclamant*)

“*disgorged funds*” means funds collected by the Commission as a result of a disgorgement order issued by the Tribunal;

“disgorgement order” means a decision, ruling, order or temporary order of the Tribunal requiring a person to disgorge to the Commission any amounts obtained as a result of the non-compliance under any provision of financial and consumer services legislation;

“eligible applicant” means a person who:

- (a) Suffered a financial loss as a direct result of the non-compliance that gave rise to the disgorgement order; and
- (b) Did not directly or indirectly engage in the non-compliance that resulted in the disgorgement order.

“*regulator*” means the each of the following positions appointed under the *Act*:

- (a) the Executive Director of Securities;
- (b) the Superintendent of Insurance;
- (c) the Superintendent of Pensions;
- (d) the Superintendent of Credit Unions;
- (e) the Superintendent of Loan and Trust Companies;
- (f) the Director of Cooperatives;
- (g) the Director of Consumer Affairs;
- (h) the Director of Mortgage Brokers; and
- (i) the Director of Unclaimed Property.

“Staff” means Financial and Consumer Services Commission staff. (*membres du personnel*)

- (2) The terms “Commission”, “financial and consumer services commission”, “financial and consumer services legislation” and “Tribunal” have the same meaning as defined in the *Act*.
- (3) This rule is intended to ensure that any funds obtained by the Commission as the result of a disgorgement order are distributed fairly and in accordance with the purposes of subsection 21(6) of the *Act*.

PART 2 NOTICE

Required notice to potential claimants and public

2. (1) Once the Commission receives disgorged funds under a disgorgement order, the Commission shall:
 - (a) provide notice to known claimants at their last known addresses.
 - (b) post notice on the Commission’s website; and
 - (c) issue a press release about the notice.
- (2) The Commission may provide notice to the public by any of the following means:
 - (a) in a newspaper or similar online publication having general circulation in the area where potential claimants are likely to reside.
 - (b) through various social media channels that potential claimants are likely to follow.
- (3) Notice provided under this part shall be in a form provided by the regulator and will include the following information:
 - (a) the deadline for making a claim;
 - (b) description of the non-compliance that resulted in the disgorgement order;
 - (c) details regarding the case including:
 - (i) the names of the parties;
 - (ii) the amount of the disgorgement order;
 - (iii) the amount the Commission has received as of the date of the notice;
 - (iv) the date of the notice;
 - (d) details regarding the amounts the Commission deducted from the funds collected, including, if applicable and as appropriate, the cost of providing notice and any reasonable disbursements incurred by the Commission to collect the disgorged funds or to develop and administer the claims process;
 - (e) details on how to make a claim;
 - (f) the regulator who will be the decision-maker in assessing the claim.

Costs

3. The cost of providing notice under this Part and any reasonable disbursements incurred by the Commission in collecting the disgorged funds may be off-set against any disgorged funds held by the Commission prior to a distribution.

PART 3 CLAIMS

Who can make a claim?

4. (1) Only an eligible applicant can make a claim.
 - (2) An eligible applicant is a person who has:
 - (a) Suffered a financial loss as a direct result of the non-compliance that gave rise to the disgorgement order; and
 - (b) Did not directly or indirectly engage in the non-compliance that resulted in the disgorgement order.
5. (1) A claim form shall be available on the Commission website.
 - (2) Details on how to submit a claim will be included in the claim form and can be submitted online on the Commission's website or by submitting a pdf version of the claim form, with supporting documents to:

Financial and Consumer Services Commission, Corporate Services (Claims Process)
85 Charlotte Street, Suite 300
Saint John, NB E2L 2J2.
6. Claimants will need to provide, at minimum, the following information:
 - (a) name, address and contact information;
 - (b) the amount of the claim;
 - (c) the amount of the financial loss;
 - (d) whether the investor received anything back from the investment or from a civil proceeding;
 - (e) information about any involvement in the non-compliance;
 - (f) any hedging or risk limitation transaction and the outcome;
 - (g) certification that the information provided in the claim form is true and correct;
 - (h) updated information if anything changes.
7. A claim may be denied if the claimant makes a statement or provides information that is false or misleading.

PART 4 ASSESSMENT

Considering the claim

8. (1) Following the claim deadline, the regulator will determine if the claimant is an eligible applicant.
 - (2) The regulator will consider the following in determining a claim:
 - (a) the recommendations from Commission staff who will review all claims;
 - (b) the amount of disgorged funds the Commission received;
 - (c) the loss each claimant suffered;
 - (d) the losses all eligible applicants suffered;
 - (e) entitlement or compensation from other sources;

- (f) whether the claimant benefited from the non-compliance that gave rise to the disgorgement order;
- (g) the results of any hedging or other risk limitation transactions.

(3) The regulator will not consider financial loss attributed to a loss of opportunity, or interest on any loss.

Denying a claim

9. If the regulator intends to deny a claim, the claimant will be provided with an opportunity to say why the claim should not be denied.

Prorating claims

10. (1) In this section:

“A” is the amount of disgorged funds the Commission received under the disgorgement order;

“B” is the loss suffered by the eligible applicant, and

“C” is the losses suffered by all eligible applicants.

(2) If the amount of disgorged funds the Commission receives is not enough to cover all eligible applicants, the Commission may prorate payment among eligible applicants in accordance with the following formula:

$$\frac{A \times B}{C}$$

(3) The decision to prorate a claim is final and not subject to an opportunity to be heard.

Receiving payment

11. Where it is fair and appropriate, an eligible claimant may receive advance, partial or installment payments.

12. If the regulator makes a decision to pay all or part of a claim, the Commission will send the eligible applicant payment and a summary of the total amount the Commission received, any costs the Commission deducted from the amount received and the remaining amount that was available to pay out to eligible claimants.

PART 5 REPEAL AND EFFECTIVE DATE

Repeal

13. Local Rule 15-502 *Procedure for distribution of disgorged funds* is repealed.

Effective date

14. This Rule comes into force on •.