Harvey Naglie
Toronto, Ontario

September 7, 2025

Member Regulation Policy
Canadian Investment Regulatory Organization (CIRO)
Suite 2600, 40 Temperance Street
Toronto, ON M5H 0B4

Re: Disgorgement – Proposed Amendments to the Mutual Fund Dealer Rules (CIRO Bulletin 25-0218): Dealer Accountability, Paired Disgorgement, and Incentive-Driven Misconduct

Dear Sir or Madam,

I write in my personal capacity regarding CIRO's request for comments dated August 21, 2025. I support codifying disgorgement in the Mutual Fund Dealer (MFD) Rules and aligning the text with the Investment Dealer and Partially Consolidated framework. This is a useful step that complements CIRO's Disgorgement Distribution initiative.

Two practical gaps merit explicit attention in the final package:

1. when a representative (Rep) is ordered to disgorge, the dealer often retains its share of the gains; and
2. enforcement outcomes frequently emphasize Rep misconduct while comparatively fewer cases hold dealers to account for weak oversight and incentive schemes (grids, targets, scorecards) that can drive the behaviour.

In light of these gaps, the following recommendations are intended to align sanctions with who actually benefited, to activate dealer accountability when firm oversight or incentives contributed, to raise the likelihood and speed of payments to harmed investors, and to improve transparency around outcomes.

Summary of recommendations

1. **Paired disgorgement by both parties.**
   When both the Rep and the dealer benefited—or when firm oversight or pay design contributed—name both in the order and quantify each party's disgorgement. The dealer's amount should reflect its economic gains (fees, trailers, spreads, embedded compensation), net of directly attributable costs; the Rep's amount should reflect commissions/bonuses tied to the misconduct. This is separate from any fines.

2. **Joint-and-several collection to speed payment.**
   Make the disgorgement jointly and severally collectible so investors can recover from either the Rep or the dealer first. After investors are paid, the Rep and dealer can settle contributions between themselves. Where helpful, allow structured payment plans or security to support timely recovery.

3. **Supervision-and-incentives nexus.**
   Set out a clear test that engages dealer accountability where oversight deficiencies (KYP/product governance, surveillance thresholds, branch reviews, training, complaint escalation) or compensation/scorecard design materially contributed to the misconduct or its persistence.

4. **Sanction Guidelines update (targeted).**
   Publish concurrent guidance to: (a) codify the paired-disgorgement expectation; (b) include the supervision-and-incentives nexus; and (c) provide principled apportionment factors (control/foreseeability; who kept the money; quality of supervision/response; incentive design; conduct history; remediation).

5. **Transparency from day one of the 2026 rollout.**
   At program launch, publish the initial quarterly public dashboard breaking out amounts **ordered and collected** from Reps versus dealers, indicating when incentive structures were implicated, and reporting time from order to payment and claimant uptake.

6. **Improve collectability in practice.**
   Once orders are final, tie re-registration or approval changes to good-faith payment arrangements; permit structured payment plans and, where appropriate, security/collateral. This responds to low individual collection rates relative to firms.

7. **Investor-facing notices.**
   In distribution notices and the portal, identify both respondents, state the apportionment in plain language, and indicate if incentive design or supervision failures were implicated and how they were remediated.

Why dealer-level disgorgement and accountability are needed

Recent OSC–CIRO work on bank-affiliated mutual fund dealers found that sales pressure and scorecards are linked to recommendations not aligned with clients' interests—clear evidence that firm-level incentives and oversight matter.

In this context, Deming's management principle is directly on point: most problems arise from the system leaders design, not isolated "bad apples." In this context, weak controls or incentive schemes at the dealer level can predictably shape Rep behaviour.

Collections reality (why this changes outcomes for investors)
CIRO's FY2025 enforcement report shows starkly different collection rates: firms at or near 100%; individuals in the low-teens range. Requiring dealers to disgorge their share—and making disgorgement **joint and several**—will materially increase funds available for distribution and expedite payments by permitting collection from either the Dealer or the Rep.

Mandate alignment
These measures—paired disgorgement, a supervision-and-incentives nexus, joint-and-several collection, and transparent reporting—support CIRO's public-interest mandate by promoting fair redress, credible deterrence, and clarity for investors.

Drafting approach
If CIRO prefers to keep Rule 7.4.1 concise, I believe that the changes proposed above can be implemented via: (i) an interpretive note confirming panels should address both parties' disgorgement where the nexus is met and may order joint-and-several collection; and (ii) an updated Sanction Guidelines chapter covering paired disgorgement, the nexus test, and apportionment factors.

Conclusion
Codifying disgorgement is an important step. Making it effective requires pairing Rep disgorgement with dealer disgorgement of the dealer's gains, activating dealer accountability when firm systems and incentives contributed, and reporting outcomes transparently. This will promote better deterrence and more timely, meaningful distributions to harmed investors.

Thank you for considering these comments. I would be pleased to discuss.

Sincerely,

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