



CANADIAN ASSOCIATION  
OF RETIRED PERSONS

5545 Stanley Place  
Halifax, Nova Scotia  
B3K2E8

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**Member Regulation Policy**

Canadian Investment Regulatory Organization  
Suite 2600  
40 Temperance Street  
Toronto, Ontario M5H 0B4  
e-mail: [memberpolicymailbox@ciro.ca](mailto:memberpolicymailbox@ciro.ca)

**Trading and Markets**

Ontario Securities Commission  
22<sup>ND</sup> Floor  
20 Queen Street West Toronto, Ontario M5H 3S8  
e-mail: [TradingandMarkets@osc.gov.on.ca](mailto:TradingandMarkets@osc.gov.on.ca)

and

**Capital Markets Regulation**

B.C. Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street, Vancouver, British Columbia, V7Y 1L2  
e-mail: [CMRdistributionofSROdocuments@bcsc.bc.ca](mailto:CMRdistributionofSROdocuments@bcsc.bc.ca)

**Disgorgement – Proposed Amendments to the Mutual Fund Dealer Rules**

<https://www.ciro.ca/newsroom/publications/disgorgement-proposed-amendments-mutual-fund-dealer-rules>

CARP appreciates the opportunity to comment on subject consultation.

CARP fully support the CIRO proposal to explicitly provide for disgorgement in the Mutual Fund Dealer Rules, aligning them with the existing Investment Dealer and Partially Consolidated Rules. Seniors are often the victim of unauthorized trading, unsuitable investments and excessive trading (“churning”).

This change will add clarity for mutual fund Dealers and their Representatives and ensure CIRO Hearing panels have a clear mandate to order disgorgement as a definitive isolable sanction. Harmonizing these rules is essential for enhanced

enforcement and for increasing public confidence in the regulation of Canada's capital markets.

The Proposed Amendments will also enable CIRO to implement its Disgorgement Distribution Proposal more expeditiously in the interim of the CIRO Dealer and Consolidated Rules coming into effect.

Such disgorgements, once collected, can provide credible deterrence and provide reimbursement to harmed investors for some on the costs incurred associated with the breach of CIRO rules by the Firm's representative and his/her Dealer.

While seniors and retirees will appreciate the refund of a portion of the commissions paid to the Firm, a question arises. Why is the Dealer Member not required to disgorge the other part of the commissions retained by the Firm whose supervision proved unable to prevent investor harm?

The services Agreement is between the client and the Dealer. The fees **paid to the Dealer** for services include supervised investing and advice services. That is often cited as a major reason to work with CIRO regulated Dealers.

When the Ombudsman for Banking Services and Investments investigate a complaint, it is a complaint against the Dealer. If it is found that the Dealer's action or inactions caused investor harm, the Dealer is required to compensate the client for the harm caused. This implicitly includes ALL the fees paid for the flawed investment services provided.

Where a Dealer's gains are intimately connected with the sanctioned action (e.g. unsuitable investments not prevented by supervision) and the gains would not have been earned but for the deficient supervision, a CIRO Panel should be able turn to gain-based disgorgement remedy as an appropriate measure of damages. In other words, the Dealer's share of the gains wrongfully obtained should be disgorged/collected and handed over to harmed investors.

The fact that CIRO may choose not to hold a Hearing for failed supervision by its members is not sufficient reason to justify allowing its members to retain the improper sales commissions for harm- causing advice. All related sales commissions obtained should be disgorged. A bonus benefit of disgorging ill-gotten Dealer gains will be that it would incent Dealers to improve their supervisory processes so that its representatives do not break CIRO rules.

Finally, we encourage CIRO to step up collection intensity and/or seek changes in the law to enhance CIRO sanction collection powers.

Permission is granted for public posting of this Comment letter.

Yours truly,

*Bill VanGorder*

**Advocacy and Education Officer Emeritus  
Treasurer, CARP National Board  
Past Chair & Senior Spokesperson, CARP NS Chapter  
Canadian Association of Retired Persons (CARP)**

VanGorder@CARP.ca

902 999 3572 (cell)

linkedin.com/in/billvangorder

*The Canadian Association of Retired Persons (CARP) is a national, non-partisan, non-profit organization that advocates for financial security, improved health care and freedom from Ageism for Canadians as we age. With over 250,000 members and 23 chapters across Canada, CARP advocates on behalf of older Canadians with all levels of government and collaborates with other organizations on health, ageism, housing, healthcare and financial issues.*

[www.CARP.ca](http://www.CARP.ca)