

Harvey Naglie

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General Counsel's Office
Canadian Investment Regulatory Organization (CIRO)
40 Temperance Street, Suite 2600
Toronto, Ontario, M5H 0B4

Re: CIRO Consultation on Proposed Changes to the CIRO Arbitration Program (Notice 22-0187)

Dear General Counsel,

I appreciate the opportunity to comment on CIRO's proposed reforms to its Arbitration Program (the "Program") as detailed in Notice 22-0187. The modernization of this Program represents an important initiative to enhance investor protection and access to justice within Canada's financial regulatory framework. Below, I provide feedback on each aspect of the proposal and offer recommendations to address additional considerations that support fairness, transparency, and accountability.

1. Extension of the Program to Mutual Fund Dealers

I fully support the proposed extension of the Program to clients of mutual fund dealers. This measure will eliminate jurisdictional gaps that create confusion among investors and hinder their access to alternative dispute resolution. A unified Program ensures all investors under CIRO's oversight benefit from consistent standards of protection.

2. Eligibility and the \$350,000 Threshold

While aligning Program eligibility with claims above the OBSI compensation limit (\$350,000) is a practical approach to defining boundaries, I encourage a mechanism for flexibility. For instance, cases under the threshold where legal representation is necessary, or unique circumstances exist could be addressed through a discretionary arbitration process. Such flexibility would serve claimants requiring enhanced procedural support while preserving the principle of predictability.

3. Increasing the Award Limit to \$1 Million

The proposed increase in the award limit to \$1 million is a positive step, but I recommend periodic reviews of this cap to ensure it aligns with inflation and evolving market conditions. Allowing parties to consent to higher claims where warranted is a balanced approach, but it is essential that procedural safeguards are in place to manage such cases effectively.

4. Strengthening Mediation as a Preliminary Step

I support the integration of mediation as an element of the Program. However, to promote balanced engagement, CIRO should mandate an initial mediation session for all disputes, with complainants' fees subsidized. Additionally, implementing progressive cost structures for parties delaying mediation would incentivize timely resolutions. Metrics tracking mediation outcomes, published in anonymized reports, would enhance transparency and accountability.

5. Limitation Periods

The current two-year limitation period is inadequate and risks excluding claimants unaware of their rights or unable to act promptly due to complexities in their cases. A six-year limitation period, consistent with OBSI and international standards, would significantly improve accessibility and fairness for all participants.

6. Cost and Procedural Accessibility

I commend CIRO's initiatives to reduce costs through subsidized case management and fixed-fee arbitration. Further partnerships with pro bono legal clinics could alleviate financial burdens, particularly for self-represented investors. Additionally, CIRO should explore fee caps for arbitrators and restrictions on expert witness expenses to enhance affordability without compromising procedural integrity.

7. Publication of Arbitration Decisions

Publishing anonymized case studies and detailed statistical reports on Program outcomes is an essential transparency measure. Regular updates on case types, resolution timelines, and outcomes will build public trust and inform improvements. I also recommend that CIRO include aggregated data on mediation success rates and cost savings to highlight the Program's effectiveness.

Additional Recommendations

To ensure the Program achieves its objectives, I propose the following:

- **Continuous Program Evaluation:** Establish regular reviews of the Program's operations to address emerging challenges and stakeholder feedback.
- **Stakeholder Engagement:** Maintain open dialogue with investors, industry participants, and advocacy groups to ensure the Program evolves to meet their needs.

- **Education and Awareness:** Invest in initiatives to raise public awareness of the Program, particularly among vulnerable groups such as seniors and newcomers to Canada.

Conclusion

CIRO's modernization of the Arbitration Program is a commendable effort to enhance investor protection and access to justice. The recommendations outlined in this letter aim to further these objectives by ensuring the Program remains inclusive, efficient, and transparent. I trust CIRO will consider these and other stakeholder perspectives to create a robust and trusted alternative dispute resolution mechanism.

Thank you for the opportunity to comment. I am available to discuss these recommendations further and look forward to the outcome of this important consultation.

Yours sincerely,

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