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VIA E-MAIL - GeneralCounselsOffice@ciro.ca

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

Dear General Counsel:

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

Getz Prince Wells LLP welcomes the opportunity to comment on the proposed reforms to CIRO's arbitration program.

Getz Prince Wells LLP primarily practices securities law and regulation. We advise investment firms, across various registration categories, including Canada's and British Columbia's two largest independent, employee-owned, self-clearing investment dealers. Our 35 years of experience handling retail client complaints includes numerous IDA/IIROC/New SRO/CIRO and OBSI matters, representing dealers and complainants.

Getz Prince Wells LLP supports all initiatives that enhance the efficiency and efficacy of dispute resolution mechanisms for Canadian investors and their dealers. While there may still be a place in the Canadian investment industry landscape for an enhanced CIRO sponsored arbitration program, we have concerns about the efficiency, efficacy, and fairness of some of the proposed changes to the arbitration program, and about the program itself.

Scope of Program

The consideration of any changes to the arbitration program and its future role should be deferred until the outcome of the Canadian Securities Administrators (CSA) initiative to reform the dispute resolution serviced offered by the Ombudsman for Banking Services and Investments (OBSI) is known. If the arbitration is maintained or reformed, there is no reason in principle why the program should not extend to customers of mutual fund dealers. Their inclusion will ensure consistency in the treatment of investors across the regulatory spectrum. The program should, however, avoid any overlap with the dispute resolution program administered by OBSI.

The CSA recently announced a second round of Request for Comments concerning OBSI reform for the latter half of 2025. This development arose out of concerns raised by several investment dealers about key aspects of the CSA's initiative, including the limitation period and appeal process. Any

modification to the arbitration program should await the outcome of the CSA process. It is premature to make any changes to the program until OBSI reform becomes clearer. If there is a role for an expanded (or continued) CIRO sponsored arbitration process, the process should be complementary to OBSI's process, without any overlap. A clear delineation between the two programs will minimize confusion and inefficiency and promote greater confidence in the dispute resolution system among all stakeholders, including investors and CIRO members.

If the two programs are to co-exist, a technical issue that will require consideration is how claims decided under the arbitration program for amounts within OBSI's monetary jurisdiction should be dealt with[1]. If the proposed arbitration program is restricted to claims between OBSI's monetary limit and $1.0 million, investors could circumvent the OBSI process by intentionally inflating the amount of their claim. There needs to be a rule that will discourage such behavior. At the very least, awards within the OBSI mandate should be remonstrated by being made payable net of the dealer's costs and the costs of the arbitration. Without meaningful deterrents, the arbitration program, as proposed, could undermine the OBSI process.

The Limitation Period

The proposed six-year limitation period is unwarranted. Lengthy limitation periods undermine efficient dispute resolution and their timely resolution. Moreover, there is no compelling national public interest to support a six-year limitation period. Most Canadians live in two-year limitation jurisdictions, with Quebec being a three-year limitation period and the Atlantic Provinces and Territories being six-year limitation period jurisdictions. A two-year limitation is more than adequate and reflects a consistent legislative trend in Canada to shorten limitation periods. A six-year limitation runs against the national trend and the public policy that has informed limitation reform in Canada.

As a matter of policy, (retail) investors should be encouraged to bring forward their complaints in a timely manner after they possess sufficient knowledge to make a claim. There is no compelling reason why investors require more time to bring an action against a dealer than consumers need to bring a trade practice claim, or a person needs to make a personal injury or contract claim. Why should the proposed arbitration limitation period be any different? Longer limitation periods often prejudice dealers when dealing with untimely claims made because of failed memories or relevant witnesses no longer in their employ. The potential prejudice is exacerbated by the higher dollar claims envisioned by the new arbitration program.

The applicable limitation period for the proposed OBSI binding authority regime remains a live issue. In fact, it is one of the main reasons why the CSA agreed to call for a second round of public comment. Binding authority programs are inherently different than non-binding dispute resolution programs, including what their appropriate limitation periods should be. The arbitration program should not have a longer limitation period than OBSI's, and ideally, the limitation periods should be the same. Two years is more than adequate for Canadian investors to make complaints and initiate applicable dispute resolution processes.

There is considerable merit in having a single, two-year limitation period for all Canadian investors. Alternatively, any CIRO or CSA dispute resolution sponsored program can simply adopt the applicable Provincial or Territorial limitation period where a customer resides. The alternative approach respects provincial jurisdiction, whereas a national six-year limitation period does not.

The Lack of an Appeal Process

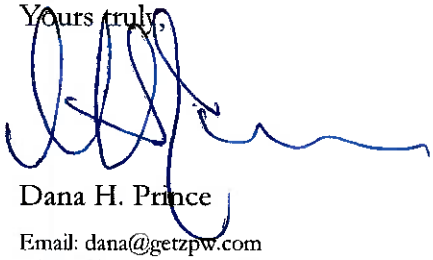
The arbitration process offers neither party a practical appeal process. Even the CSA recognized that binding jurisdiction for OBSI requires a review process of its decisions. The scope of the OBSI appeal process remains a live issue for OBSI reform and was another main reason why the CSA granted a second round of public comment. Given the proposed increased monetary jurisdiction to the arbitration program, an appeal process is essential. Why should CIRO members and customers have a review process for cases up to $350,000 adjudicated by OBSI and for all court-adjudicated cases (small claims or superior court) but be denied a review process for cases adjudicated under the arbitration program. The public policy argument escapes us, especially when dealing with claims over $350,000. Without a fair appeal process the proposed arbitration program will never gain institutional credibility. Again, CIRO should await the outcome of OBSI reform before considering any modification (or retention) of the arbitration program.

Providing Financial Support for the Program

In principle, there is no objection to the proposals to help defray the costs of claimants should it be determined that expanding the program makes sense.

Thank you for considering our comments.

Yours truly,



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[i] Until OBSI reform is determined, it is impossible to assess whether there will be any class of potential claims within OBSI's monetary jurisdiction that fall outside of its mandate, and whether these claims should be justiciable under the arbitration program. This is another reason to defer making any further changes to the arbitration program until OBSI reform is known.