



Friday, January 10, 2025

By email: GCOcomments@ciro.ca

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

Re: CIRO Request for Comments 24-0308 – Proposal to Modernize the CIRO Arbitration Program, published on October 31, 2024

The **Canadian Independent Finance and Innovation Counsel (CIFIC)** appreciates the opportunity to provide comments to the Canadian Investment Regulatory Organization (CIRO) on the Modernization of its Arbitration Model.

The Canadian Independent Finance and Innovation Counsel represents national Investment Dealers and their industry's position on securities regulation, public policy, and industry issues. We represent notable CIRO-regulated Investment Dealers in the Canadian securities industry.

CIRO position

In its proposal, CIRO states:

...the Program has the potential of offering a much-needed alternative dispute resolution (ADR) forum in Canada, being part of the investor protection landscape, promoting greater access to justice and resources for resolution of investment-related disputes.

The Investment Dealers we represent agree with CIRO's position on the importance of protecting Canadian investors and promoting greater access to justice.

Consultation question #1 included in the CIRO Arbitration proposal:
Should the Program be extended to clients of mutual fund dealers?

CIFIC and the Investment Dealers it represents believe the scope of any CIRO arbitration program should extend to clients of mutual fund dealers. This inclusion will ensure consistency in the treatment of investors across the regulatory spectrum.

Consultation question #2 included in the CIRO Arbitration proposal:
Should the Program remain available for 1) claims that fall outside OBSI's mandate/eligibility criteria and 2) claims where investors had attempted to resolve their dispute through OBSI and withdrew from or abandoned the process?

The program should avoid overlapping with the dispute resolution program administered by the Ombudsman for Banking Services and Investments (OBSI). Any changes to the CIRO arbitration program should be deferred until the outcome of the CSA's binding authority for OBSI initiative is known.

The Canadian Securities Administrators (CSA) recently announced that a further comment period concerning the OBSI initiative will take place during the second half of 2025. This development arose out of concerns raised by CIFIC and a number of Investment Dealers about certain key aspects of the initiative, including the limitation period and appeal process. Any modifications to the arbitration program should await the outcome of the CSA process.

The Investment Dealers we represent believe it is premature to make any changes to the arbitration program until the OBSI reform becomes clearer.

Clear Delineation between Programs for Added Clarity

If there is a role for an expanded CIRO-sponsored arbitration process, the process should be complementary to the OBSI process and without 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.

Undermining the OBSI Process

One technical issue that will require further consideration, is what should happen to claims adjudicated under the CIRO arbitration program for an amount within OBSI's monetary jurisdiction.

If the proposed arbitration program is to be restricted to claims over the OBSI limit (currently \$350,000) and to a maximum of \$1,000,000, the only way to prevent investors from circumventing the OBSI process by asserting claims ostensibly more than OBSI's compensation limit, would be to have a rule that deters such behaviour. At the very least, awards within the OBSI mandate should be made payable net of the arbitration and dealer's costs. Without a meaningful deterrent, the arbitration program, as proposed, may have other unintended consequences that could undermine the OBSI process.

Consultation question #4 included in the CIRO Arbitration proposal:

[Should the limitation period be extended and what would be the appropriate limitation period for arbitration claims in the Program?](#)

CIFIC and the Investment Dealers it represents strongly oppose a six-year limitation period.

Most Canadians live in jurisdictions with two-year limitation periods, with Quebec having a three-year limitation period. A two-year limitation period is more than adequate in the circumstances.

Canadian limitation legislation has moved to shorten limitation periods; a six-year limitation period runs against this trend, and, importantly, against the public policy that has informed limitation reform. As a matter of policy, clients should be encouraged to bring forward their complaints in a timely manner after they possess sufficient knowledge to make a claim. There is no valid reason why investors require more time to bring an action than a consumer has to bring a trade practices claim, or a person has to make a personal injury or contract claim. Provincial or territorial limitation periods govern both small claims actions and Supreme Court actions, and CIRO arbitration should not be any different.

The applicable limitation period for the proposed OBSI binding authority regime remains a live issue. In fact, it is one of the reasons why the CSA agreed to call for a second round of public consultation. CIRO's arbitration program should not have a longer limitation period than OBSI's binding authority program.

Undue Burden on Investment Dealers

A six-year limitation period poses an undue burden on investment dealers, particularly for claims involving substantial monetary amounts (more than \$350,000). High dollar claims are typically brought forward by more sophisticated investors who possess the resources and knowledge to initiate their cases promptly, and well within a two-year timeframe. Regardless, the amount of a claim does not have any bearing on the determination of the applicable limitation period.

A two-year timeframe is more than adequate for Canadian investors to make complaints and initiate applicable dispute resolution processes and reflects the limitation period that governs the majority of Canadians. Although we believe there is merit in having a single limitation period for

all Canadian investors, alternatively, both the CIRO and OBSI programs could simply adopt the applicable provincial or territorial limitation period where a customer resides.

Consultation question #3 included in the CIRO Arbitration proposal:

Is the proposed range, between \$350,000 (and potentially \$500,000) to \$1,000,000, appropriate for arbitration claims involving investor disputes in Canada?

We recommend that CIRO await the outcome of the CSA's initiative for granting OBSI binding authority before considering any modification or retention of the arbitration program, including the possible monetary range of claims.

The Lack of an Appeal Process

The arbitration process offers neither party a practical appeal process. The CSA has recognized that binding jurisdiction would require some form of review process for OBSI decisions. The scope of the OBSI appeal process remains a live issue for OBSI reform and is one of the principal reasons why the CSA will hold a second round of public consultation.

An appeal process is also essential to the CIRO arbitration program. CIRO members and customers enjoy an appeal process for claims up to \$350,000 that are adjudicated by OBSI or in small claims court or the Supreme Court; they should not be denied any practical appeal for claims between \$350,000 and \$1,000,000 tried under the CIRO-sponsored arbitration program.

Without a fair appeal process, the proposed arbitration program would not have any institutional credibility. Again, we submit that CIRO should await the outcome of the CSA's initiative for granting OBSI binding authority before considering any modification or retention of the arbitration program.

Consultation question #5 included in the CIRO Arbitration proposal:

Would the proposed changes, in particular: (1) funding reasonable case management and mediation costs, (2) setting reasonable arbitrators' rates and offering fixed fee arbitration, and (3) referring self-represented litigants to pro bono legal assistance, effectively address the issue of costs in the Program and promote greater access to justice for parties in investment-related disputes?

Again, we submit that CIRO should await the outcome of the CSA's initiative for granting OBSI binding authority before considering any modification or retention of the arbitration program. Responding to this question seems premature to the Investment Dealers we represent.

Conclusion

We appreciate CISO's commitment to improving investor protection and ensuring fair processes for all participants. We would like to reiterate that CISO should await the outcome of the CSA's initiative for granting OBSI binding authority before considering any modification or retention of the arbitration program.

Thank you for considering our comments on this important proposal.

As always, we are available to discuss the content of this submission further, address any concerns you may have, or provide additional information as needed. Your feedback is invaluable to us, and we are committed to ensuring that we all achieve our objectives effectively and efficiently.

Please feel free to contact me at annie@cific.co with any questions, comments, or to schedule a call to discuss any aspects of the letter or explore potential next steps. We look forward to our continued collaboration on this matter.

Sincerely,

A. Sinigagliese

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