



January 31, 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

Dear General Counsel's Office:

iA Private Wealth Inc. (iAPW) and Investia Financial Services Inc. (Investia) appreciate the opportunity to comment on the proposed reforms to the Canadian Investment Regulatory Organization's (CIRO) arbitration program. iAPW is a dealer member of CIRO that is registered as an investment dealer, mutual fund dealer and derivatives dealer. Investia is a mutual fund dealer and exempt market dealer registered with the Autorité des marchés financiers and a dealer member of CIRO registered as a mutual fund dealer. iAPW and Investia focus on creating and preserving wealth for Canadians by working with independent advisors. We believe strongly in the critical role of the advisors and their delivery of advice to Canadian investors. To that end, our dealers offer an open and comprehensive product shelf to provide our advisors with the flexibility to create personalized advice solutions.

iAPW and Investia support initiatives and reforms that enhance the efficiency and efficacy of dispute resolution mechanisms for investors and dealers. While there may still be a place in the Canadian investment landscape for an enhanced CIRO-sponsored arbitration program, we have some concerns about the efficiency, efficacy, and fairness of the proposed arbitration program.

iAPW and Investia support the comment letter submitted by Canadian Independent Finance and Innovation Counsel (CIFIC) on this important topic. We wish to reiterate the following:

Scope of Program

If the arbitration program is to continue in its present or modified form, we see no reason in principle why it should not extend to clients of mutual fund dealers. This inclusion will ensure consistency in the treatment of investors across the regulatory spectrum.

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: it is premature to make any changes to it until OBSI reform becomes clearer.

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.

One technical issue that will require further consideration, is what should happen to claims adjudicated under the arbitration program for an amount within OBSI's monetary jurisdiction¹. 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.

The Limitation Period

We 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, which would also allow dealers to respond more fulsomely to claims due to more timely access to records, relevant personnel, and other such information. There is no valid reason why investors require more time to bring an action than a consumer has to bring a trade practice 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.

A six-year limitation period would pose 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

¹ Until OBSI reform is finalized, 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.

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 most 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.

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. Given the proposed increased jurisdiction to the CIRO arbitration program, an appeal process is essential. 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 will never gain 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.

Yours sincerely,

Investia Financial Services Inc.



Louis H. DeConinck
President

iA Private Wealth Inc.



Adam Elliott
President & Chief Executive Officer

Investia Financial Services Inc. and iA Private Wealth Inc. are subsidiaries of Industrial Alliance Insurance and Financial Services Inc., a life and health insurance company founded in 1892 that operates under the trade name iA Financial Group.