

General Counsel's Office

Canadian Investment Regulatory Organization (CIRO)
40 Temperance Street, Suite 2600
Toronto, Ontario, M5H 0B4

January 30, 2025

Re: Proposal to Modernize the CIRO Arbitration Program

The Federation of Independent Dealers (“Federation”) has been, since 1996, Canada’s only dedicated voice of mutual fund dealers. We now represent CIRO member dealerships with hundreds of billions in assets under administration and tens of thousands of licensed advisors that collectively provide financial services to millions of Canadians. As such we have a keen interest in all matters that impact the dealer community.

We appreciate the opportunity to provide comments on the proposal modernization of the CIRO Arbitration Program, as outlined in the consultation document dated October 31, 2024. All member dealers of CIRO have a vested interest in ensuring that the arbitration program remains a viable, cost-effective, and confidential alternative to litigation for resolving investment-related disputes.

In response to the consultation questions:

1. Extension of the Program to Clients of Mutual Fund Dealers

We strongly support the extension of the Program to clients of mutual fund dealers. This would harmonize access to dispute resolution for complainants of ID and MFD dealers and investors, simplifying access and reducing investor confusion. Sophisticated investors with complex complaints of any dollar value will appreciate the availability of the high levels of securities expertise that CIRO can bring to bear in conjunction with a binding decision upon both parties.

2. Availability of the Program for Claims Outside OBSI's Mandate/Eligibility Criteria

We believe that the Program should remain available for claims that fall outside OBSI's mandate/eligibility criteria. This would preserve investors' freedom of choice and offer a less expensive, swift, and highly capable alternative to civil litigation. Maintaining this program ensures investors have access to a dispute resolution mechanism that offers a higher level of expertise and confidentiality.

3. Appropriate Range for Arbitration Claims

Raising the minimum claim level to \$350,000 (or \$500,000) removes access to this program for mid-market Canadian investors, whose portfolios typically range from \$100,000 to \$250,000. Leaving the lower limits to be handled exclusively by OBSI may expose dealerships to reputational risk if OBSI is granted binding resolution authority and it publishes all binding decisions.

We agree with the raising of the upper bound of the program maximum to \$1,000,000 and higher on consent.

4. Limitation Period

We are comfortable with the current two-year period for claims. However, if a change is enacted we emphasize the importance of ensuring the extended limitation period doesn't lead to an increase in frivolous or stale claims. An overlong period may facilitate investors simply waiting to assess performance results before deciding to complain. We note here that OBSI does not appear to take the tax benefits received via certain securities (flow through shares) into account for loss calculations¹.

5. Addressing the Issue of Costs

We welcome the proposed changes to address the issue of costs in the Program, including:

Funding Reasonable Case Management and Mediation Costs:

We support the proposal to fund reasonable costs of case management and mediation, as this would promote greater access for parties in investment-related disputes. However, we emphasize the importance of ensuring that the funding is used efficiently and does not lead to an increase in administrative costs. As the funding arrangement for Osgoode Hall Legal Clinic expires in 2025², consider directing some of this "major funding" (if renewed) be earmarked to supporting investor access to this valuable program.

Setting Reasonable Arbitrators' Rates and Offering Fixed Fee Arbitration:

We support the proposal to set reasonable arbitrators' rates and offer fixed fee arbitration options, as this would help control costs for both investors and dealerships. We also support the regular review of arbitrators' fees to ensure that they remain reasonable.

Referring Self-Represented Litigants to Pro Bono Legal Assistance:

We support the proposal to refer self-represented litigants to pro bono legal assistance.

Additional Considerations

We support the maintenance of confidentiality in the arbitration process. As the Working Group noted, we agree that the publication of arbitration decisions has the potential to undermine this defining feature of the program. We submit CIRO should limit publication of arbitration decisions to enhanced statistics and select anonymized case studies, and to be sensitive in retaining a higher level of anonymity in regions with lower numbers of dealers.

In conclusion, we support the proposed modernization of the CIRO Arbitration Program, with a focus on maintaining confidentiality, controlling costs, and improving access. If our SRO decides to limit access to only investors with complaints involving sums over \$500,000, we reasonably expect usage will decline due to the reduced pool of possible complainants.

¹ <https://www.obsi.ca/en/how-we-work/our-approaches/comprehensive-investment-loss-calculation/>

² https://www.osgoode.yorku.ca/media_releases/osgoode-investor-protection-clinic-partners-with-pan-canadian-self-regulator-iiroc/

Thank you for considering our comments. We look forward to the outcome of the consultation process and the implementation of the proposed changes to the program.

Sincerely,

Matthew T. Latimer, Executive Director
Federation of Independent Dealers
Fédération des Courtiers Indépendants