**APPENDIX A**
**REQUEST FOR COMMENTS RE: AWARD LIMIT OF $500,000 AND COSTS AWARDS**
**COMMENTS SUBMITTED**

In response to Notice 10-0227 *Summary of Public Comments relating to IIROC Arbitration Program Review and Request for Comments re: Award Limit of $500,000 and Costs Awards*, eight comment letters were submitted from a cross-section of investors, dealers and special interest groups (see list of submissions attached). All comment letters have been posted on the IIROC website.

Set out below is a reference chart highlighting issues raised via the comment process and the recommendations and views of IIROC. Several references were made to previous comments made in respect of Notice 09-0359 *Review of IIROC Arbitration Program*. In such cases, IIROC's recommendation/position has also been reproduced below.

| **Issue** | **Comment** | **IIROC Recommendation/Position** |
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| Award Limit | Agree with $500k award limit provided it is reviewed no less than every 2 years. – SIPA/Kivenko<br><br>Support the increase to $500k, but prefer larger increase to a minimum of $1M . – RBCDS, FAIR<br><br>The limit should be reviewed in 2 years – FAIR | With more robust and standardized tracking and reporting of arbitration cases initiated in 2009, IIROC is able to monitor the Program on an ongoing basis and will review the appropriateness of the award limit not less than every two years. |
| | $500K with arbitration mandatory for claims over $100K to ensure due process controls of the arbitration process apply. – IIAC | IIROC believes that investor choice should be maintained. |
| | The $500k award limit is a dramatic increase and is too high. The limit should be increased to no more than $250k with a commitment to further review in two to three years. For many small members, a judgment of $500k would have a catastrophic impact and the process does not offer the same procedural protections as a court nor a right of appeal. – Jones, Gable & Company Limited | There are rules of procedure and governing law to ensure administrative fairness in arbitration proceedings. IIROC received sufficiently broad support for the limit to be $500,000 in connection with Notice 09-0359. IIROC believes that the $500,000 award limit is appropriate and reflects a balance between expeditious and cost-effective dispute resolution, and ensuring adherence to principles of natural justice and legal process. |

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| Costs Awards | Eliminate opportunity for costs award (each side pays own legals). – R. Lepofsky, E. Tokarz; C. Mitchell, SIPA/Kivenko<br><br>Allowing claimant the right to eliminate costs discretion provides that party with a unilateral right that advantages it at the cost of the other. – Jones, Gable & Company Limited<br><br>Granting clients the exclusive ability to opt out of the costs regime compromises the fairness of the process and erodes an important procedural safeguard. At a minimum, the election to opt out of the arbitrators' discretion to award costs should require both parties' consent, and pleadings should be introduced. – IIAC<br><br>Supports the proposal but clarify that the arbitrator cannot award costs award costs on the basis that claimant has made a claim the defendant does not like. The arbitrator should identify up-front whether or not they will be awarding costs, based upon the claimant's written application for arbitration. - R. Lepofsky, E. Tokarz<br><br>Supports proposal for investor to make election as to costs. In the absence of such an election, the default should be that the arbitrator would have no discretion to award costs in the absence of unfair or improper behaviour. – FAIR – R. Lepofsky, E. Tokarz<br><br>Elimination of costs awards to cover cases already in progress. – R. Lepofsky, E. Tokarz, C. Mitchell | IIROC believes that the proposal which provides the investor with the right to make an election on costs addresses the potential deterrent of an adverse cost award. This may be particularly important in the case of a claimant who does not retain counsel. For those investors who have retained counsel and who are willing to take the risk of an adverse cost award, the election preserves the arbitrator's discretion to award costs (as in civil litigation). Eliminating cost awards entirely may deter investors from choosing arbitration over civil litigation.<br>The changes will permit the claimant to choose, at the point of filing the claim, between the following options regarding costs awards: (1) the arbitrator shall not award legal costs against a party unless he/she finds that the party has acted in a manner that may be characterized as unfair, vexatious, improper, in bad faith or has unnecessarily and unreasonably prolonged proceedings, or (2) the arbitrator shall have discretion to award costs against a party.<br><br>Even though the rules of procedure of the arbitration organizations will provide that an election be made at the commencement of the arbitration, IIROC proposes that the default in the event of no election will be that the arbitrator will have no discretion to award costs unless he/she finds that the party has acted in a manner that may be characterized as unfair, vexatious, improper, in bad faith or has unnecessarily and unreasonably prolonged proceedings.<br><br>An application of the new rule which would be, in effect, retroactive would prejudice parties relying on rules currently in effect at the time arbitration was initiated. However, as a transition matter, IIROC proposes that the parties may by agreement apply the elimination of costs awards to a case in progress when the changes to the Program take effect. |

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| Disclosure to Arbitrator of Costs Election | Recommend that the election as to costs be disclosed to the arbitrator at the outset of the proceeding. – FAIR | IIROC supports disclosing the election to the arbitrator at the outset of the proceeding. |
| Funding of Investor's Arbitration Fees (filing fees and fees of arbitration organizations and arbitrators) | IIROC should levy membership fees or use collected fines to create a fund to cover arbitration fees of investors or to subsidize smaller claims. – RBCDS (by reference to previous submissions)<br><br>IIROC should levy membership fees or use collected fines to create a fund to cover arbitration fees of investors or to subsidize smaller claims. – RBCDS (by reference to previous submissions) | As previously noted, in order to contain costs, IIROC has negotiated favourable rates with the arbitration organizations. IIROC understands that cost is a factor for investors and will continue to monitor the costs associated with the Program. |
| Investor Education and Investor Assistance | IIROC should fund no or low-cost services to assist individual investors in understanding the nature of their claim, extent of damages, implications of potential costs awards and requisite paperwork. Investor rights groups across Canada should be given the opportunity to provide the service. – FAIR<br><br>IIROC should provide investor assistance and education in the form of a plain language brochure and better resource materials. Investors should be provided with guidance on how to draft a claim and the eligible elements of loss that are subject to redress. – SIPA/Kivenko<br><br>IIROC should redraft the brochure to set out details of the alternative processes and/or create a guide for investors with details of the dispute resolution options. – RBCDS (by reference to previous submissions)<br><br>The processes and ability to use OBSI and/or the Program should be clearly communicated. The cost advantages of the Program must be considered and clearly communicated to potential users. – IIAC | As previously noted, IIROC has undertaken a number of information and education initiatives, including website disclosure, a webcast, creation of industry brochures, and, most recently, a bilingual telephone information service on dispute resolution and monetary recourse options available to investors.<br><br>The websites of the arbitration organizations also provide information, including the rules of procedure relating to the IIROC arbitration program and other useful material.<br><br>These comments are helpful as IIROC continues to monitor the Program and to evaluate and seek opportunities to provide information to investors. |

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| Rule 37.2 and OBSI | The current requirement in Rule 37.2 positions OBSI as the only free, and therefore viable, dispute resolution service available to investors. – RBCDS | IIROC's role is to provide investors with factual information about the options available. The fact that the OBSI process is free is not the only relevant factor to be considered by an investor in making his or her decision. The proposed increase in the award limit and ability to make an election on costs award will be among the additional factors in an investor's analysis of the options available. |
| | Revise Rule 37.2 to remove requirement for member firms to participate in OBSI and include language similar to s. 13.16 of NI 31-103 which provides that registered firm must ensure that independent dispute resolution or mediation services are made available, at the firm's expense, to an investor to resolve a complaint. Investors should be provided with dispute resolution services that are (1) offered at no cost to the investor and (2) fair to all parties involved and this cannot be achieved through the current requirement to participate in OBSI. – RBCDS | To eliminate the current approach and put the onus on investors to compare and evaluate each dealer's dispute resolution program would diminish the current level of investor protection in a manner that is, in IIROC's view, not appropriate in the current environment |
| | Decrease OBSI's limit to $100K. – RBCDS (by reference to previous submissions) | As previously noted, IIROC does not believe that it is practical or feasible to unilaterally reduce OBSI's threshold in respect of the investment industry. It is important to note that OBSI was established as a multi-sector solution for the banking and investment industry. Any review of the monetary threshold for OBSI awards would more appropriately be undertaken as part of a broader, multi-sector review. |
| Arbitration Procedures | IIROC should prepare streamlined procedures for smaller claims and address difficulties with venue of hearings for seniors, the infirm and the handicapped. – SIPA/Kivenko | As previously noted, IIROC is of the view that, at this stage of the Program, IIROC should proceed with the changes proposed and evaluate their impact prior to undertaking further reforms. IIROC also believes that there is value in maintaining the simplicity of the system for the benefit of investors and ease of administration. |

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| Arbitration Procedures (cont) | | Under the existing rules, parties may agree to any simplified procedure including decisions based on written pleadings only. The rules also require that proceedings be conducted in a practical and cost-effective manner. With respect to venue, the rules provide that the arbitrator must conduct the arbitration in the place and via the means involving the least expense (subject to agreement of the parties). Parties may agree to conduct proceedings in writing only, or via teleconference or video conference. IIROC will continue to monitor the location of arbitrations and accessibility as the Program progresses. |
| | Recommend the introduction of pleadings. – IIAC | As previously noted, the rules require written claims and defences and supporting evidence. To require that written claims be set out in formal pleadings would increase the costs of arbitration. |
| | Mediation should be offered as a mandatory precursor to arbitration. This may increase the efficiency of the process and significantly decrease the need for arbitration. - IIAC | Investors already have recourse to OBSI, which is non binding and free. While mediation has the potential to increase the efficiency of the process, where unsuccessful, it can also lengthen cases and increase arbitration costs. |
| | Panel of three arbitrators by option for claims over $250k. - IIAC | As previously noted, use of a panel increases costs to the parties and would likely lengthen cases due to scheduling and availability challenges. IIROC supports use of a panel where both parties agree (for any claim amount). |
| | To lower arbitrators' rates and other fees, expand list of approved firms and standardize rules of procedure. – RBCDS (by reference to previous submissions) | As previously noted, IIROC has instituted improved reporting guidelines and is monitoring the Program. IIROC will continue to evaluate the performance of the firms conducting the arbitrations on an ongoing basis. |
| | As files associated with higher compensation claims will likely be more complex, it is important that arbitrators have the expertise to clearly understand the issues in order to make fair and sound decisions. – IIAC | IIROC believes that there needs to be a period of time to evaluate the Program using the current arbitration firms after implementation of an increase in the award limit and the enhanced administrative and reporting procedures and to observe the effect of these |

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| Arbitration Procedures (cont) | | changes. IIROC would consider a RFP process after this period.<br><br>Administrative inconsistencies would be likely; the same rules will be administered differently by different organizations |
| | It is important that the Program retain an advantage over civil litigation in respect of time taken to resolve a dispute. – IIAC | As previously noted, IIROC has requested that the arbitration firms enforce time delays rules as discussed in Notice 09-0359. Speed of resolution of cases is to a great extent determined by parties. If both parties are prepared and adhere to the Program procedures, cases can be resolved in as little as three months. |
| Statistics and Reporting | Publish decisions, case summaries and statistics. – SIPA/Kivenko, RBCDS (by reference to previous submissions)<br><br>A form of anonymized reporting should be considered. – IIAC<br><br>IIROC should publish statistics including nature of complaint, cycle times, average dollar award, histogram of award amounts, client satisfaction and win/loss ratios. – SIPA/Kivenko<br><br>IIROC should publish detailed aggregate statistical information about cases entered into the Program, and consider publishing full decisions in the future. – FAIR | As previously noted, confidentiality is one of the hallmarks of arbitration and should be preserved. The Program rules require the arbitrator to provide the parties with a reasoned, written decision within a specified time period. IIROC Program decisions are not intended to create precedents for other potential claimants and cases are decided solely in accordance with applicable law based on the specific facts of each case. Mandating publication of decisions could increase costs and result in the process taking longer.<br><br>IIROC has requested of the arbitration firms extensive data points for cases launched on and after January 1, 2009. These new procedures and reporting guidelines will enable IIROC to accurately report certain statistical indicators regarding the Program. IIROC does not support publishing decisions at this time but consideration will be given to enhancing disclosure, whether through case summaries, aggregated data or other means. |

## COMMENTS RECEIVED

Canadian Foundation for Advancement of Investor Rights (FAIR Canada), October 8, 2010
Investment Industry Association of Canada, October 6, 2010
Jones, Gable & Company Limited, September 8, 2010
Lepofsky, Ron, September 3, 2010
Mitchell, Charmaine, September 13, 2010
RBC Dominion Securities Inc., October 8, 2010
Small Investor Protection Association, August 27, 2010
Tokarz, Eilene, September 8, 2010