



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Director

Rosemary Chan
Senior Vice President and General Counsel
Investment Industry Regulatory Organization of Canada
121 King Street West – Suite 1600
Toronto, ON M5H 3T9

October 6, 2010

Dear Ms. Chan:

Re: Rules Notice 10-0227 – Award Limit and Costs Awards for IIROC Arbitration Program

The Investment Industry Association of Canada (the “IIAC”) appreciates the opportunity to provide input on the proposed changes to the IIROC arbitration program (the “Program”).

We support the Program, in particular, the presence of procedural rules which form the basis for a credible and impartial dispute resolution framework. The procedural rules governing the use and presentation of evidence, the finality of the decision and the potential awarding of costs are consistent with principles of fairness, and the finality of a binding decision discourages spurious claims and defenses.

Despite having a more rigorous and procedurally fair process than the Ombudsman for Banking Services and Investments (“OBSI”), the Program is underutilized. Given that OBSI offers a no cost, risk-free, consumer friendly, non-binding option with higher compensation limits, there is little incentive for clients to choose arbitration as a method of dispute resolution.

Increasing the compensation limit to \$500,000 will likely result in greater utilization of the Program. However, in light of the magnitude of the potential awards, it is very important that all of the existing due process procedures are retained, including the arbitrators’ discretion to award costs. This discretion provides an important safeguard to ensure participants act fairly and in an efficient manner. By granting clients the exclusive ability to opt out the costs regime, the fairness of the process is compromised and an important procedural safeguard is eroded. The proposed standard for awarding costs provides significant leeway which may allow the parties to introduce delays and additional procedural costs at a level that may not be characterized as unfair, vexatious, improper

or in bad faith. At a minimum, the election to opt out of the arbitrators' discretion to award costs should require both parties' consent.

The proposed increase in the compensation limit is significant, particularly for smaller firms. As such, we recommend that additional procedural safeguards be introduced to ensure due process exists for such potentially material claims. The number and nature of safeguards, however, must be carefully balanced against the objective of the Program, so that the Program continues to represent a lower cost and more efficient alternative to civil litigation.

At a minimum, in order to ensure parties are aware of all of the claims against them and defenses that will be presented, we recommend the introduction of pleadings. In addition, we believe it is appropriate to provide parties with the option of requesting a three person arbitration panel on claims exceeding \$250,000.

We re-iterate the concern expressed in our previous letter, that for claims up to \$350,000, the Program will be underutilized due to the cost and risk free nature of making a claim through the OBSI process. Given the significance of potential liability, we maintain our position that claims in excess of \$100,000 should be subject to the due process controls inherent in the arbitration process.

The increased compensation limit, combined with the finality of a binding decision with no avenue for appeal, increases the risk for both parties. In determining the appropriate balance between due process and the utility of the Program, we recommend that IIROC also consider the following points:

Transparency: If the compensation limit is increased, it is likely that more investors will use the Program. The result is that there will be more confidential decisions, which does not promote transparency. This in turn, does not support consistency in decision making, either at the firm level or by the arbitrators themselves. A form of anonymized reporting should be considered.

Complexity: It is likely that the files associated with higher compensation claims will be more complex. It is important that the arbitrators have the expertise to clearly understand the issues in order to make fair and sound decisions.

Timing: It is important that the Program retain an advantage over civil litigation in respect of the time taken to resolve a dispute.

Overlap with OBSI: There may be confusion as to the benefits, obligations and limitations for clients in using one or both programs. The processes and ability to use one or both programs must be clearly communicated.

Costs: The nature of the Program must ensure that there is an advantage to pursuing arbitration over civil litigation in respect of costs. For large claims, both clients and the firm would generally retain counsel, increasing the costs and minimizing potential benefits over litigation. Additional cost advantages must be considered and clearly communicated to potential users of the Program.

Mediation as an Alternative: In order to assist in early settlement, mediation should be offered, as a precursor to arbitration. If mediation is made a mandatory step prior to

Arbitration, it may increase the efficiency of the process, and significantly decrease the need for arbitration.

The existence of an industry-specific, accessible and low cost complaint resolution process is important to both clients and firms. In order to create confidence in, and maintain support for the Program, all parties must believe that in addition to being less costly and time consuming than civil litigation, a level of due process exists to ensure that the outcome is fair to all parties.

If you have any questions or comments, please do not hesitate to contact me.

Yours sincerely,

“Susan Copland”