



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

March 16, 2010

Dear Ms. Chan:

Re: Rules Notice 09-0359 – Review of IIROC Arbitration Program

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide input on the operation of, and future direction of the IIROC arbitration program (the "Program").

As the statistics demonstrate, the Program has been underutilized for the last number of years, likely due to the expansion of the OBSI in 2002, to include investment dealers as stakeholders. It seems clear from these numbers, that in its current form, the Program does not provide adequate value to clients and firms, and is not viable in the short or long term.

Currently, there is little incentive for clients to incur the costs and potential risk of a final, binding adverse ruling on their dispute, when OBSI offers a no cost, risk-free, consumer friendly non-binding option, with higher compensation limits.

The Program does, however, have positive attributes that distinguish it from the OBSI, that are important in creating and maintaining a credible dispute resolution framework that has both client and industry support. The procedural rules, including the ability to present one's case, to examine and cross examine witnesses, as well as the expertise of the arbitrators contribute to increased confidence in the fairness and assurance of a minimum standard of due process.

Although the Program's more rigorous procedural standards contribute to what may be perceived as a more balanced and fair process, it does come at a cost. The fees and increased formality associated with the Program may deter certain clients from pursuing a claim, particularly where the compensation sought is significantly less than the \$100,000 limit.

The IIAC believes that the industry's dispute resolution framework could be improved by creating a unified system that recognizes and preserves the positive aspects of OBSI and the arbitration program, while addressing the areas that have been the subject of criticism. The unified system would retain the ability of the client to choose Arbitration or OBSI for claims less than \$100,000. For compensation claims of between \$100,000 and \$500,000, arbitration would become the industry dispute resolution process.

This model has the advantages of retaining the informality and cost advantages of the OBSI for smaller claims, ensuring that potential compensation received by clients is not significantly diminished by administrative and outside legal costs. For more significant claims, it ensures that a measure of due process is injected into the resolution of the dispute. This graduated dispute resolution model introduces more rigour in the process through the procedural rules governing the use and presentation of evidence, the finality of the decision and the potential awarding of costs. The introduction of due process measures as the potential damages increase is consistent with principles of fairness. In addition, the added costs and consequences of the imposition of a final binding decision will almost certainly result in fewer spurious claims and defenses.

As noted above, we believe the compensation limit of the arbitration program was a significant factor in its demise, particularly given OBSI's higher compensation limit, and the potential costs of using the Program. By combining an increase the Program's compensation limit with a corresponding reduction in OBSI's ability to recommend compensation, the utilization of the Program will likely increase. The increase in the compensation limit, however, must be counterbalanced by the addition of certain additional procedural safeguards to further ensure due process. Currently there are no pleadings, which may lead to parties not being fully aware of the claims against them or defenses to be presented.

Our members have expressed concern, however, that a single arbitrator could impose a significant, binding compensation order on a firm without the possibility of appeal. In order to alleviate concerns about a single arbitrator making a final and binding decision on claims where significant compensation orders are involved, we believe that parties should be provided the option of requesting a 3-person arbitration panel on claims exceeding \$250,000.

The IIAC supports the existence of an industry-specific complaint resolution process to ensure clients and firms have the means to resolve disputes in a forum that has expertise in financial industry claims, relatively lower costs and is less formal than the civil litigation process. By integrating the OBSI with the arbitration program in a graduated complaint resolution framework, the industry would be able to provide consumers with an industry specific recourse for resolving their complaints, while ensuring that all parties are afforded the appropriate level of due process as the amount of the claims becomes more significant.

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

Yours sincerely,

Susan Copland