



March 12, 2010

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

Dear Ms. Chan,

Re: Review of IIROC Arbitration Program

I am writing on behalf of the National Alternative Dispute Resolution Section of the Canadian Bar Association (CBA Section) in response to the Investment Industry Regulatory Organization of Canada's (IIROC) Request for Comments concerning review of its Arbitration Program. The CBA Section consists of dispute resolution practitioners from across Canada. We have also consulted with civil litigation specialists practicing in the area of banking and investment services in preparing our response.

The December 2009 Notice containing the Request for Comments describes three avenues for resolving disputes between IIROC Dealer Members, including: a) an Arbitration Program currently administered by two independent arbitration firms (Canadian Commercial Arbitration Centre for Quebec and ADR Chambers Inc.); b) non-binding redress of investment industry complaints by the Ombudsman for Banking Services and Investments (OBSI); and c) civil litigation through the appropriate court of jurisdiction. In addition the Arbitration Program administered by l'Autorité des marchés financiers may recommend and provide support for voluntary mediation. We support providing a variety of recourses to address disputes arising with IIROC Dealer Members.

The Notice indicates that the current IIROC award limit under the Arbitration Program is \$100,000. We support the recommendation to increase the monetary limit to \$350,000 plus interest and costs, in keeping with the compensation limit that can be awarded by the OBSI, provided that cases can be resolved in a timely fashion. A higher limit would also be acceptable, subject to the same qualification concerning expediency of the process.

We recommend including an option to be heard by a panel of three arbitrators, where each party chooses an arbitrator and those arbitrators then choose their own chairperson. While a panel of arbitrators may increase the cost of arbitration, it could encourage parties to use the Arbitration Program by minimizing any apprehension of bias.

The Notice states that administration of the Arbitration Program has been consolidated with two arbitration firms. There is merit in a uniform approach to hearing these matters and standardized reporting methodology is also likely to encourage better statistical tracking of cases. We recommend that at appropriate intervals (every 3 or 5 years), the IIROC tender bids to allow other Quebec and national arbitration firms to administer the Arbitration Program. This would reinforce concepts of neutrality and openness.

The Notice indicates that the current average time to resolve a case under the Arbitration Program ranges from 8.5 months to 2.25 years. In addition to the privacy of the proceedings, one of the main advantages of arbitration from a dispute resolution viewpoint is shorter timelines for resolving disputes. While we favour making extensions available as permitted by the Arbitration Program rules, we believe that 2.25 years is too long for resolving a \$100,000 dispute through arbitration. We recommend that timelines be tightened and again stress that raising the monetary limit to \$350,000 or beyond should not further increase the time required to reach resolution under the Arbitration Program.

We thank you for the opportunity to address these matters, and trust that our comments will be helpful.

Sincerely,

(Original signed by Gaylene Schellenberg for Anne I. Gottlieb)

Anne I. Gottlieb
Chair, National Alternative Dispute Resolution Section