APPENDIX A
REVIEW OF IIROC ARBITRATION PROGRAM (THE "PROGRAM")
COMMENTS SUBMITTED

In response to Notice 09-0359 *Review of IIROC Arbitration Program*, eighteen 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's Management.

Issue	**Comment**	**IIROC Management Recommendation/Position**
Award Limit	$350K or higher. – Canadian Bar Association $500K with arbitration mandatory for claims over $100K and OBSI by option under $100K. – IIAC $1M. – FAIR, RBCDS No cap. – FAIR Increase of award limit to $350K with consideration of a higher limit such as $500K is a significant increase. Disputes involving such large amounts should be decided in court with the attendant process. For amounts greater than $350K, dealer should have the option of civil litigation instead of arbitration. – IGSI $500K. – SIPA/Kivenko, TD Waterhouse $500K or $750K. – OBSI IIROC award limit should always be higher than OBSI because OBSI is free and its process raises concerns. Also concerned that OBSI may raise its claim limit. – TD Waterhouse Decrease OBSI's limit to $100K. – RBCDS Both IIROC and OBSI caps should be increased. – Hollander & Geller	Almost all submissions made on this point favour an increase of the award limit, ranging from $350K to $1M, and even no limit. The majority cluster at the $500K mark. IIROC is proposing an increase in the award limit under the Program to $500,000 and invites comment on this point. A few submissions support a tiered approach with a lower limit for OBSI and a higher limit for the Program. Some are of the view that litigation is appropriate for higher amounts. Increasing the Program limit to $500K would result in a tiered approach to dispute resolution. The investor will continue to have choice of recourse: OBSI for up to $350K, arbitration for up to $500K and court action. IIROC believes that investor choice should be maintained. The Canadian system presents investors with a significant advantage by permitting investors to choose among various recourses. In the U.S., for example, arbitration of these disputes is, effectively, mandatory. IIROC will not adopt this approach. IIROC does not believe that it is practical or feasible to decrease OBSI's threshold, as the current dispute resolution framework was established as a multi-sector solution for the banking and investment industry.

Viability of the Program (retain vs. eliminate)	Most commenters support the IIROC arbitration alternative, provided threshold objections like potential adverse costs awards and the award limit are addressed.	With consistent and harmonized reporting on a going forward basis, IIROC will monitor the Program for a period of time. IIROC proposes to increase the award limit and to address costs awards as set out below.
	SIPA/Kivenko comments that the Program would be viable if it were understood, perceived as fair, expeditious, and award limit increased.	IIROC has undertaken a number of information and education initiatives, including website disclosure, a webcast, creation of industry brochures, and, most recently, implementation of a new, personalized and bilingual telephone information service to provide information about the alternative avenues of investor recourse. IIROC will continue to evaluate and seek opportunities to provide information to investors.
	Viability must be examined in context of interaction with OBSI. – TD Waterhouse	With consistent and harmonized reporting on a going forward basis, IIROC will monitor the Program for a period of time.
	Only one submission advocated elimination of the Program (and Rule 37) – and an oversight role for IIROC and the MFDA to ensure compliance with National Instrument 31-103 ("NI 31-103"); Program no longer necessary given new complaint handling rules, civil court changes, etc. The varying systems adopted by dealers would give rise to public comment and comparison and factor into investor choice of dealer. – Wiesenfeld	IIROC supports providing investors with choice of recourse. IIROC believes that it is in the public interest to vet and designate, and have certain centralized authority with respect to, the arbitration firms, and participate in the re-drafting of the rules of procedure. IIROC also places high importance on fairness and consistency in rules, procedures and administrative practices across cases and jurisdictions. This is achieved most effectively and efficiently through some degree of consolidation. 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.
Costs Awards (reimbursement by a party of any portion of legal fees incurred by the other party – distinct from arbitration fees)	Eliminate opportunity for costs award (each side pays own legals). – FAIR, Coville, Goldin (but pay winning party's expert), R. Lepofsky, E. Lepofsky; C. Mitchell, M. Mitchell, SIPA/Kivenko 4 Requests for elimination of costs	The current rule enables the arbitrator to make an award of legal costs in his/her discretion. Arbitration fees (fees of the arbitration organization and arbitrators – distinct from legal costs) are in principle split equally with discretion to reallocate; postponement and cancellation fees are paid by the

	awards to cover cases already in progress. – Lepofsky x 2, Mitchell, Pencil Each party bears own costs unless a dealer acts unfairly or abusively. – FAIR Cap costs awards at: $1K – Gignac $3K – 5K + $3K for expert. – Goldin	incurring party (investor or dealer). IIROC wishes to balance (i) the deterrent of the risk of an adverse costs award (particularly in the case of claimants who do not retain counsel), and (ii) the legal and fairness principles upon which claimants may wish to rely to recoup expenses of successful pursuit of a claim. IIROC is proposing revision of the rules of procedure of ADRC and CCAC to 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. Comments are solicited. Mandatory application of this new approach to cases in progress could cause prejudice to a party relying on rules in effect. The parties may, by agreement, modify the application of the rule on cost awards to a case in progress in accordance with the policy considerations outlined above.
Funding of Investor's Arbitration Fees (filing fee and fees of the arbitration organizations and arbitrators – distinct from costs of legal representation)	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 Consider a tiered arbitration fee structure. – RBCDS	In order to contain costs, IIROC has negotiated favourable rates with the arbitration organizations. IIROC understands that cost is a factor for some investors and will continue to consider this issue. The arbitration fees are charged and retained by the arbitration organizations and arbitrators. The fees and rates are applied uniformly to all cases regardless of the amount claimed. A tiered fee structure suggests a subsidy. IIROC understands that cost is a factor for some investors and will continue to consider this issue.
Fund and provide representation/guidance Improve investor education and	Use Restricted Funds to subsidize a service to guide investors, help them understand and prepare their claims and case. – FAIR IIROC should provide investors with guidance on how to draft a claim and	IIROC has undertaken a number of information and education initiatives, including website disclosure, a webcast, creation of industry brochures, and, most recently, implementation of a new, personalized and bilingual telephone information service to provide

information to clarify the process and alternatives	the eligible elements of loss that are subject to redress. – SIPA/Kivenko 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	information about the alternative avenues of investor recourse. IIROC will continue to evaluate and seek opportunities to provide information to investors. The websites of the arbitration organizations also provide information, including the rules of procedure relating to the IIROC arbitration program and other useful material.
	Do not position OBSI as the first stop. – RBCDS	It is the investor who chooses which dispute resolution alternative to pursue. IIROC's role is to provide investors with factual information about the options available, including a comparison of the options. The fact that OBSI is free and non-binding is a factor that will be considered by the investor in making this decision.
NI 31-103 s. 13.16	Please provide guidance on impact of CSA NI 31-103, s. 13.16 on IIROC program and IIROC's expectations of Members e.g., any requirement to fund mediation service apart from IIROC arbitration program, will coverage of claimant costs under IIROC's arbitration program satisfy the national instrument? – TD Waterhouse IIROC Rule 37 should be repealed as NI 31-103 renders it redundant; review of IIROC Program must address NI 31-103. – Wiesenfeld	Rule 37 and s. 13.16 of the CSA's NI 31-103 are consistent. Compliance by members with Rule 37 (specifically participation in both OBSI and the IIROC arbitration program) constitutes compliance with s. 13.16 of NI 31-103.
Arbitration Procedures	Publish decisions without names. – SIPA/Kivenko, RBCDS	The Program rules require the arbitrator to provide the parties with a reasoned, written decision within a specified time period. IIROC is not proposing publication of the arbitral decisions. Publication and creation of quasi-jurisprudence would likely increase costs to the parties. 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.
	Publish no-names case summaries. – FAIR, Hollander & Geller	IIROC has insisted on more robust and standardized tracking and reporting of statistical information by the arbitration firms to IIROC going forward. These new procedures and reporting guidelines will enable IIROC to accurately publish statistical indicators regarding the Program. This statistical information

Arbitration Procedures (cont'd)		will provide some valuable aggregate information and trend guidance, which is not currently available.
	Panel of three arbitrators by option. – CBA, IIAC (over $250K)	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).
	The CBA (ADR) and others have commented on the amount of time it takes to resolve a claim. SIPA has requested benchmarking and standard setting regarding same.	IIROC agrees that cases should be resolved more expeditiously and has taken steps to encourage same. One of those steps was to explicitly request that ADRC and CCAC enforce the time delay rules (which contemplate extension by agreement or arbitral decision) as discussed in Notice 09-0359. Speed of resolution of cases is to a great extent determined by parties. The IIROC mandated time delays (e.g., 7 days for dealer response (statement of defence)) should not be shortened. Past delays have been caused by both claimants and respondents. A number of claimants have failed to proceed with cases for extended periods without withdrawing the file. IIROC has requested that ADRC and CCAC close files where claimants fail to proceed and do not respond to repeated communications. Since speed of resolution of cases is to such a great extent determined by the parties, strict targets and benchmarking is of limited value. If both parties are prepared and adhere to the Program procedures, cases can be resolved with ADRC and CCAC in as little as three months.
	Rules of procedure should be subject to IIROC approval. IGSI SIPA/Kivenko notes that IIROC's by-laws are not subject to review by an "Independent Advisory Committee representing retail investor interests". This may refer to the rules of procedure of the arbitration organizations.	IIROC staff worked closely with ADRC in preparing the new rules (implemented on December 15, 2009) and approved them. IIROC is working with CCAC to achieve the same result.
	To lower costs, introduce a simplified procedure for small claims like FINRA. – RBCDS	IIROC has considered this alternative, but is of the view that, at this stage of the Program, simplicity of structure is of

Arbitration Procedures (cont'd)		high importance. IIROC may reconsider this recommendation in future. Under the existing rules, parties may agree to any simplified procedure including decision based on written pleadings only. The rules also require conduct of proceedings in a practical and cost-effective manner. Management also notes that the FINRA program is, effectively, mandatory, and is not subject to an award limit, as discussed in Notice 09-0359.
	There are no pleadings under the Program. – IIAC	The rules require written claims and defences and supporting evidence. To require unrepresented claimants to present their claims in the form of formal facta would be unreasonable. The rules of the arbitration firms are set out on their websites.
	Location. OBSI makes on-site visits, helpful for older, infirm, handicapped claimants. – SIPA/Kivenko ADR Chambers travel costs are high and disadvantage anyone not in Toronto. – Hollander & Geller	Complainants are not required to travel to Toronto. The rules provide that the place of arbitration shall be the province in which the claimant resides and the arbitrator must conduct the arbitration in the place and via the means involving the least expense (subject to agreement of 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.
Choice of arbitration organization	IIROC should conduct a RFP every 3-5 years. – CBA To lower arbitrators' rates and other fees, expand list of approved firms and standardize rules of procedure. – RBCDS	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. 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 changes. IIROC would consider a RFP process after this period. Administrative inconsistencies would be likely; the same rules will be administered differently by different organizations.

		IIROC has negotiated very favourable rates for the Program.
	Dealers should have input on selection and approval of the arbitration organizations to ensure the organizations are viewed as qualified and impartial. – IGSI	IIROC considers all relevant factors in evaluating the arbitration organizations and will act in the public interest in designating same.
Statistics	IIROC should publish statistics including nature of complaint, time to resolution of complaint, award amounts, win/loss ratios. – SIPA/Kivenko, Hollander & Geller	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.
Miscellaneous	Dealer internal ombudservices are not fair and independent. – Hollander & Geller	IIROC's new complaint handling rule was implemented on February 1, 2010 and sets out IIROC's requirements regarding handling of complaints by Dealer Members.
	Unequal power between the dealer and investor permeates arbitration, OBSI and court. – Hollander & Geller; others have commented on inequality with various focuses	The comments received regarding the experience of parties are helpful as IIROC continues to monitor and evaluate the Program.
	Claimant's best approach is to file a civil suit then lodge a complaint with IIROC and let IIROC do all the legwork then seek civil damages based on an IIROC finding; problem: dealer can be disciplined or fined for lack of supervision but cannot be forced to compensate the victim. – Hollander & Geller	Enforcement of rules is a regulatory function. Arbitral awards are not necessarily predicated on breach of an IIROC rule.
	Apprehension of bias in favour of dealers. – Hollander & Geller Apprehension of bias in favour of investors (see comment suggesting dealer participation in vetting of arbitration firms to ensure impartiality). – IGSI	The comments received regarding the experience of parties are helpful as IIROC continues to monitor and evaluate the Program.
	Investors cannot access experts; create roster of independent experts and/or make the experts non-partisan reporting to the court, not linked to a party. – Hollander & Geller	The comments received regarding the experience of parties are helpful as IIROC continues to monitor and evaluate the Program.

COMMENTS RECEIVED

Canadian Bar Association, ADR Section, March 12, 2010
Canadian Foundation for Advancement of Investor Rights (FAIR Canada), March 16, 2010
Coville, Diane, February 12, 2010
Gignac, Peter, February 23, 2010
Goldin, Robert, MacGold Direct Inc, January 11, 2010
Hollander, John and Harold Geller, Doucet McBride LLP, January 4, 2010
Investment Industry Association of Canada, March 16, 2010
Investors Group Securities Inc., March 17, 2010
Lepofsky, Eilene, February 15, 2010
Lepofsky, Ron, February 4, 2010
Mitchell, Charmaine, February 18, 2010
Mitchell, Michael, February 20, 2010
Ombudsman for Banking Services and Investments, March 15, 2010
Pencil, Jermaine, February 19, 2010
RBC Dominion Securities Inc., March 15, 2010
Small Investor Protection Association, January 6, 2010
TD Waterhouse Canada Inc, March 16, 2010
Wiesenfeld, Joel, Torys LLP, January 4, 2010