Appendix A

Summary of Comments Received in Response to Notice 22-0187 and CIRO's Responses – Rules Notice – Request for Comments – Review of the IIROC (now CIRO)[1] Arbitration Program

On December 6, 2022, we issued Notice 22-0187 requesting public comments on the recommendations made by an independent working group (**Working Group**) on the IIROC (now CIRO) Arbitration Program (**Program**).

IIROC/CIRO received 12 comment letters from the following commenters:

The Canadian Advocacy Council of CFA Societies Canada
CIBC
Desjardins
FAIR Canada
Ken Kivenko
Harvey Naglie
Ombudsman for Banking Services and Investments (OBSI)
OSC Investor Advisory Panel
Osgoode Investor Protection Clinic (IPC)
Investment Industry Association of Canada (IIAC)
Arthur Ross
Peter Whitehouse

Copies of the comment letters are publicly available on CIRO's website (**www.ciro.ca**). We thank all commenters. The following table sets out a summary of the comments received and our responses.

[1] IIROC amalgamated with the Mutual Fund Dealers Association of Canada (**MFDA**) to form the New Self-Regulatory Organization of Canada (**New SRO**) on January 1, 2023. New SRO changed its name to become the Canadian Investment Regulatory Organization (**CIRO**) on June 1, 2023.

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General Comments	
Need for the Program	
Some commenters agreed with the Working Group's assessment that the Program continues to have the potential of offering a much-needed alternative dispute resolution (**ADR**) forum for investor claims in Canada.	Thank you. We agree.
A commenter stated it was important to preserve investor choices and ensure each dispute resolution option remains available and delivers fair outcomes for investors. The goal should not be for the Program to replace other options or cater to every type of situation.	Thank you. We agree. The intended purpose of the Program is not to become the singular dispute resolution option but to serve as a unique ADR tool, offering a more cost effective and efficient alternative to the court system.
One commenter stated that, based on their review of the arbitration statistics, keeping an infrequently used program is not in the public interest.	We recognize that participation in the Program has been low.[2] However, based on the Working Group's recommendation and our assessment, there continues to be a need for the Program and maintaining it will be in the public interest. The Program has a minimal impact on CIRO's budget and resources, and with the proposed enhancements, the Program has the potential of providing a valuable dispute resolution option for CIRO-regulated firms and their clients.
A commenter stated the proposal would have benefited from more data (e.g., how many individuals are accessing the Program, statistics on awards and which adjudicators are most active) and its review.	Arbitration statistics for the Program have been published online since 1999 and are available at **Arbitration Statistics**. Currently, given the confidential nature of arbitration, we do not publish information about arbitration awards, parties and adjudicators.

[2] There were 90 cases in the Program in 2001. Case volumes started to decline since approximately 2007, with the current Program average of 3-4 cases per year. See **Arbitration Statistics**.

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A commenter was surprised by the lack of specific discussion and considerations relating to the Program's effectiveness or suitability for older and/or vulnerable investors.	The Program is available to all investors, including vulnerable investors. Given the low case volumes in the Program in the past years, a targeted study of the Program's effectiveness and suitability for older and/or vulnerable investors was not feasible. We propose to enhance the data we collect on the Program's usage for future assessment.
Extending the Program to Clients of Mutual Fund Dealers	
Some commenters recommended the Program be opened to all divisions of CIRO. This would reduce the investor confusion and ensure the clients of investment dealer have the same avenues of redress available to them.	As part of the CIRO's **Rule Consolidation Project, Phase 3**, we proposed to extend the Program to apply to clients of both investment dealers and mutual fund dealers. We welcome comments on this question as part of this consultation, particularly in light of the proposed changes to the Program.
One commenter disagreed that the Program should be extended to mutual fund dealers at this time.[3] They suggested that rather than implementing regulations in a piece meal fashion, which could be costly and inefficient, especially knowing that further changes would need to be implemented subsequently, the Program should be extended to mutual fund dealers when the entire CIRO Dealer and Consolidated Rules (**DC Rules**) are ready to be implemented and the CSA consultation on providing OBSI with binding authority[4] is completed.	We do not intend to extend the Program to mutual fund dealers and their clients in the piece meal fashion. Rather, at this time we are consulting on the extension and other changes to the Program with an intention to implement all changes at the same time and, to the extent possible align with the implementation of the DC Rules.
Investor Confusion and Overlap with OBSI	
Some commenters stated that a system with multiple dispute resolution venues would not only reduce OBSI's ability to positively	We understand the importance of avoiding investor confusion about dispute resolution options in Canada. We are not introducing a new option; the Program has been available to

[3] In response to the **Rule Consolidation Project, Phase 3** consultation.

[4] **CSA Notice and Request for Comment – *Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service*, November 30, 2023**.

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influence the investor dispute resolution framework in Canada but also create confusion for investors.	investors in Canada for over 30 years[5], and OBSI has had a dispute resolution mandate over investment and mutual fund dealers for over 20 years. These two options have coexisted for a long time. The Program and OBSI differ in several ways: arbitration is a more formal process, similar to court proceedings, involving set procedures, presentation of evidence and legal arguments, while OBSI's process is informal, focusing on negotiation and settlement. Additionally, arbitration can be costly due to arbitration and legal fees, whereas OBSI's services are free and do not require legal representation. The Program also offers a more adversarial procedural toolkit and therefore serves as an ADR option to a usually lengthy and costly court litigation rather than competing with more informal and straightforward OBSI processes. To avoid any potential overlap, we propose to limit access to the Program for claims under the OBSI compensation limit, currently $350,000 and welcome comments on whether the Program should remain open for 1) claims that fall outside OBSI's mandate/eligibility criteria[6] and 2) investors who had attempted to resolve their disputes through OBSI and decided to withdraw or abandon their complaint[7], as discussed further below under **Award limits (#16)**.
Some commenters recommended to integrate the roles of OBSI and CIRO to make the Program complimentary (not redundant). They	Thank you. As part of the public consultation, we have either adopted or modified the Working Group's recommendations to

[5] The Program was launched as a pilot project in British Columbia in 1993 and extended to Québec in 1996 and other jurisdictions in Canada in 1999.
[6] **OBSI Terms of References, Parts 4 and 5**.
[7] OBSI has low case withdrawal rates, see Table 2 - 2018 to 2022 Case Data - Investments Only, **CSA Notice and Request for Comment – *Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service*, November 30, 2023**.

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also recommended that there be another review of the Program if OBSI receives binding authority.	that effect. We have also considered and reflected the role of OBSI and the CSA's proposal to grant OBSI binding authority.[8]
Several commenters stated that investors in Canada are confused by the complexities of the current regulatory landscape in general, where multiple regulators are involved in regulation of different investment products and services. They further stated that investors deserve viable options for the proper resolution of disputes beyond OBSI and noted that the Program has significant distinctive features irrespective of the services offered by OBSI.	We generally agree that investment regulation and dispute resolution options may be complex for an average investor. We believe the most effective way to dispel confusion is through investor education. We agree with the Working Group's recommendations on **Program's Accessibility and Awareness (#1)** and believe it is important to maintain investor choices while avoiding investor confusion.
Some commenters recommended the Program be based on the OBSI approach to loss calculation methodology for its client complain handling rules.	In the Program, arbitrators rely on the same test for assessment of damages as judges in civil courts: assessing losses based on what is fair and reasonable in the circumstances (i.e., the claimant will be "made whole" but will not receive a "windfall"). This approach is well established and has been historically used in arbitration cases. We do not believe it is necessary or appropriate to change the methodology used in arbitration proceedings.
Limitation Period	
Some commenters found the two-year basic limitation period to be at the low end of the spectrum and a major obstacle to investors' access to justice. They recommended the limitation period be extended to six years, consistent with that of OBSI and FINRA arbitration.	Thank you. We welcome further comments on whether the limitation period for claims under the Program should be extended. This will increase access to the Program for claimants who cannot otherwise pursue a civil claim in court but could ultimately undermine certainty and predictability of the dispute resolution process. We also welcome comments on what would be the appropriate limitation period.
Claim Eligibility	

[8] *Supra* note 4.

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A commenter believes off-book cases should be eligible for participation under the Program and that those who opted out of a class action also be eligible for the Program.	If claimants meet eligibility under the Program, they are not precluded from raising off-book or other relevant issues and may partake in the Program if they opted out of other litigation options, including a class action.
A commenter asked if investors who did not file an arbitration claim would be notified of their right to compensation by the firm.	No, the Program is focused by design on individual claims. It may accommodate multi-party claims but not class action proceedings. As discussed below, it is also a confidential process. As such, only claimants who commenced an arbitration claim will be privy and can participate in the Program.
Record Retention	
A commenter recommended the retention period for arbitration files be seven years, and that arbitrators be responsible for the retention.	As most arbitrations are currently conducted electronically, electronic records are typically kept indefinitely by the arbitration service providers. We intend to review and align our record retention policy with the best practices in this area. Any hardcopies of materials are either returned to the parties or disposed of with their consent after the conclusion of the case.
Specific Working Group's Recommendations	
Program Accessibility and Awareness (#1)	
Some commenters are worried that even though the recommendation to better promote the Program could help attract some complainants, it may also turn some claimants away from OBSI.	As discussed above, we propose to limit the access to the Program for claims below OBSI's maximum, currently at $350,000, and welcome comments on whether the Program should remain open to claims that 1) fall outside OBSI's mandate/eligibility criteria and 2) investors who attempted resolving their dispute through OBSI but withdrew or abandoned their complaint. We anticipate this will mitigate concerns about the Program attracting complaints away from OBSI. We further note that the Program is currently open to claims under the OBSI

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	limit and has not historically attracted claimants away from OBSI.
A commenter stated that advisors should be required to inform their clients of the existence of the Program and that the timeline to provide the information should be no more than 10 days and shorter than the 30-day PIPEDA timeline.	Investors are provided with CIRO's "**How to Make a Complaint Brochure**" which contains the information about the Program and directs investors to CIRO's website for further information on the Program, OBSI and other dispute resolution options: (1) at the time of account opening, (2) within 5 days of submitting a written complaint to the firm, and (3) with the firm's response, which is required to be delivered within 90 days of the complaint.
Written Resources for Program Participants (#2) and Procedural Rules (#4)	
A commenter stated that it was not necessary to develop arbitration rules and procedures nor should CIRO resources be used to develop them. This would detract from the CIRO's core mandate.	We already have specialized rules of procedure for the Program developed and applied by the independent service providers, **ADR Chambers** and **CCAC**. We agree with the Working Group's recommendation that the procedural rules be specialized and tailored to the Program. The Program rules were last substantively reviewed in 2011. We agree with the Working Group's recommendation that, at this time, a review would be in the public interest and do not anticipate that it would require substantial institutional resources or detract from the CIRO's core mandate.
Some commenters support the recommendation to develop specialized plain language resources for the Program stating it would improve the accessibility of the Program and promote access to justice and public confidence in the complaint handling process.	Thank you for your suggestions on creating plain language resources to make the Program more accessible and understandable. We have recently reviewed and plan to continue reviewing our materials to find ways to improve them, ensuring they are clear and easy to use for all stakeholders. While plain language materials can help clarify the arbitration process, they are meant to support, not replace, the guidance of legal counsel. Although investors may choose to represent

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	themselves in the Program, most participants are expected to have legal representation.
Some commenters insisted that redrafted materials must include a clear explanation of how arbitration differs from the OBSI process, in particular the binding outcome of arbitration.	Thank you for the comment. We agree and, as stated above, intend to further improve our written resources about the Program to clearly distinguish between investors' options, including OBSI.
One commenter recommended the development of a guide like FINRA's "**Investor's Guide to Securities Industry Disputes: How to Prevent and Resolve Disputes with your Broker**".	Thank you for this recommendation.
One commenter disagreed that a list of common questions and common categories of documents should be provided to parties to assist with their documentary discovery. Rather, and based on the civil litigation standard of disclosure, in arbitration proceedings, the disclosure should require the production of relevant documents subject to the proportionality principle to secure "the just, most expeditious and least expensive determination of every civil proceeding on its merits" and be tailored to the issues raised, size and complexity of the proceeding. The commenter suggested that guidance from an arbitrator on these issues may be helpful as opposed to the list of common questions and categories of documents.	We agree that, as a general principle, the civil litigation discovery standards apply to arbitration proceedings. As discussed further below, we propose to address discovery and other procedural matters in the Program through active case management where parties may seek guidance on these issues from an arbitrator.
A commenter stated that it might be worthwhile to also publish a guide for arbitrators outlining ways in which the arbitrators could support the parties as they navigate the arbitration process.	Arbitrators who take part in the Program have extensive training and experience as adjudicators, mediators and arbitrators. They will continue to receive training and information about the context and specialized aspects of the Program. We will consider this suggestion as part of our general review of the Program resources.
Quality of Arbitration (#3) and Selection Process (#4)	

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A commenter recommended CIRO periodically post metrics related to the Program along with simplified case studies on the website.	The Program statistics are published **online** (from 1999 to present). In the future, we propose to publish enhanced statistics to report on the Program's usage, including case volumes, detailed key issues, case outcome and other metrics. As discussed below, we have also proposed publishing select case studies representative of key issues to provide more transparency and to better inform prospective users and the public about the Program.
Some commenters stated that the Program arbitrators should have their qualifications reviewed and approved by a committee which includes users of the Program. Those qualifications should include specific, practical knowledge of securities laws, including the specific issues relevant to a given proceeding and be disclosed to the parties for them to make an informed choice.	Based on our assessment and comments received from various stakeholders, we believe it is important to maintain and heighten the independence of the Program. CIRO will continue to oversee the Program by, among other things, formalizing and reviewing the qualification metrics for arbitrators (which will include, among other things, knowledge of securities laws and the investment industry, investor-related issues and issues affecting vulnerable clients), but will not participate in the selection process. We agree with the Working Group's recommendation that parties to an arbitration proceeding should be able to review the full list of available arbitrators and their bios as well as interview prospective arbitrators to help them with the selection process. We also do not see a rationale for limiting parties' choices if they would like to engage an outside arbitrator, if the selected arbitrator and the service provider agree on the terms of engagement.
Some commenters want more training for arbitrators on topics like trading rules, suitability determination, loss calculations, account transfers, advisor duties and responsibilities as well as how to handle complaints from seniors and vulnerable clients.	Arbitrators in the Program are highly specialized and have strong background in securities laws and regulations and civil litigation, including broker negligence and calculation of damages.

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	As discussed above, to further ensure and enhance excellence and consistency of arbitration, we propose to formalize these requirements in arbitrator qualification metrics.
Some commenters asked that steps be taken to ensure arbitrators are independent and have internal controls and mechanisms to avoid conflicts of interest, and to ensure client information privacy and security over case files is maintained. A commenter suggested that arbitrators should be required to provide an annual report on their activities.	Arbitrators' independence is paramount for the functioning of and trust in the Program. Conflict checks are currently used to ensure arbitrators' independence and impartiality upon their selection and throughout the process. All arbitrators in the Program are lawyers and subject to the applicable Law Societies' requirements, including the duty to avoid conflicts of interest and maintain confidentiality, competency and integrity. To further enhance the excellence and independence of the Program, we propose to implement regular attestations to an arbitrator's Code of Conduct setting out the high standards of conduct, excellence, neutrality and impartiality of arbitrators participating in the Program.
Some commenters are concerned about the low rating given to ADR Chambers' affiliate, ADRBO and want a review to ensure that similar deficiencies do not exist at ADR Chambers.	As part of the CIRO's oversight of the Program, we intend to update our criteria for the independent service providers and conduct regular reviews (annual assessments for at least first couple of years following the Program review) of all arbitration service providers, including ADR Chambers.
Place of Arbitration (#5)	
Some commenters agreed that parties should be permitted to participate in their arbitration proceedings electronically, and rules of procedure should be amended to allow for electronic attendance at the request of a party.	Thank you. With the broad adoption of electronic communication technologies for conducting hearings, the Program rules would allow for flexibility and increased access where virtual or hybrid proceedings are appropriate and feasible. We also propose that arbitrators maintain discretion to decide on the appropriate format of proceeding where parties disagree or require guidance, based on such factors as, the nature of the

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	issues, evidence to be presented, costs, efficiency, timeliness, convenience and fairness to the parties and their witnesses.
A commenter asked if there were limits to accommodating in-person arbitration hearings. In the Working Group's recommendations, the respondent would have to travel to the preferred location of the claimant. The parties would still have to agree on splitting the arbitrator's travel costs and extra costs of administration. The commenter suggested that unless parties agree to split the travel costs, the limits to travel should be within 50/100 kms of a major center.	Based on our assessment and comments received from various stakeholders, given the advance of virtual and hybrid hearings, the place of arbitration is no longer a contentious issue. We therefore do not propose that the place of arbitration be unilaterally chosen by the claimant. Rather, we propose to allow parties to determine the appropriate location and/or format of the hearing on consent. As with the format of an arbitration hearing (discussed above), we propose that arbitrators maintain discretion to decide on the place of arbitration where parties disagree or require guidance. This approach will ensure that the interests of parties are fairly balanced, particularly where they have to absorb their own travel costs and cover travel costs of the arbitrator and possibly an administrator (if unable to administer the hearing remotely) and costs of facilities in the location where the service provider does not have an established office.
Length of Arbitration and Delays (#6)	
A commenter recommended that the Program be enhanced for better flexibility and a shorter resolution process. They suggested the FINRA rules be leveraged to implement more streamlined processes.	Thank you for your comment. After reviewing the current Program and feedback from stakeholders, we believe that case management could improve key aspects of the Program, such as setting timelines, narrowing issues, choosing the best format and location for arbitration, and resolving procedural matters. These changes would make the Program more flexible and efficient.
Acknowledging the value of timely resolution, a commenter asked that the quick resolution process be meaningfully balanced with the size and complexity of a claim to ensure the dispute is fully	We agree with the Working Group's recommendation on establishing shorter resolution timelines and case managing delays in the Program. As discussed below, a balanced approach could be implemented through case management, including

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and fairly considered and that a reasonable internal complaint review process by a firm be classified as a reasonable delay.	consideration of what constitutes a reasonable delay in the circumstances of a particular case.
Parties' Representation (#7) and Partnerships with *Pro Bono* Legal Counsel (#8)	
Most commenters supported the recommendation to allow representation by an agent and strongly encouraged the Program engage and coordinate with *pro-bono* legal counsel and clinics to provide legal assistance to investors who otherwise cannot afford a lawyer. They commented that such partnerships will improve access to justice and mitigate the imbalance of power between retail investors and their advisors.	Thank you, we agree. We believe that, generally, self-represented claimants and claimants represented by an agent would benefit from legal assistance offered by *pro bono* legal clinics and counsel. As recommended by the Working Group, and to make the Program more accessible, we intend to further develop partnerships and engage with legal clinics and lawyers providing *pro bono* legal services, and direct claimants to such resources.
One commenter disagreed with the recommendation that would have claimants able to choose any agent as their representative in the arbitration process as they believe the process would not be fair or efficient.	We propose to allow representation by an agent in the Program with the ability for the opposing party to challenge the agent's capacity and competence. Claimants in the Program have the option to be self-represented. Their ability to choose an agent (i.e., non-lawyer) as a representative would be consistent with court and tribunal practices where agents are typically allowed in straightforward proceedings that do not require representation by lawyers. As arbitration proceedings may involve complex issues, at a party's request or their own initiative, a case management arbitrator will have the ability to review the agent's capacity (i.e., legal authority to represent the party and lack of conflicting interests or obligations that could compromise representation) and competence (i.e., knowledge of relevant laws and procedures, ability to communicate effectively and ethical responsibilities).
Tiered Approach (#9)	

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Some commenters did not believe CIRO should proceed with the tiered approach as it would make the process confusing and unnecessarily complex, which could deter investors from seeking redress and would also make the Program more costly and time consuming.	Based on the comments received through the consultation to date and our assessment of the Program, we are not proposing to go ahead with the tiered approach. We have concluded that the potential benefits of the tiered structure (i.e., tailored procedural tools, timeframes and fees contingent on the claim amounts) do not justify the added complexity of the system. That is particularly so given the proposed carve out for the claims under $350,000 and the new proposed maximum award limit of $1 million (and above with parties' consent), as discussed below. We agree with the Working Group's conclusions that excessive costs and lack of flexible procedural tools represent the biggest challenges for the current Program. As set out below, we propose to address these challenges through active case management and other administrative tools, funded by CIRO. We may revisit this recommendation in the future based on the effectiveness of the refreshed Program.
A commenter stated that Tiers 1 and 2 would undermine OBSI without any benefit to complainants, and Tier 3 would adversely impact OBSI because some of those claims would be lower than the current OBSI compensation limit. They also expressed a concern that FCAC might place a cloud over OBSI if competition for OBSI eligible claims is created by adoption of the recommendations.	As stated above, we do not propose to establish claim tiers for the Program.
Some commenters supported the implementation of a mandatory mediation requirement for Tiers 1 and 2, however, did not think that waiving the fee for one hour would be realistic of how long an average claim may take to resolve. They also asked to provide statistics on the success of the mandatory mediation once implemented.	As stated above, the Program will not be modified to include claim tiers. Instead, we propose to make mediation available for all claims regardless of their dollar amount. If recommended through case management, reasonable costs of mediation (for example, up to a half-day mediation session) could be funded by CIRO.

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Some commenters support the tiered approach to the Program but with revisions. They suggested the first Tier be up to $100,000 and with no cost to investors, the second Tier be up to $500,000, and claims in Tiers 1 and 2 having access to *pro bono* legal counsel. They also commented that accelerated arbitration rules and procedures under Tiers 1 and 2 should be clear, easy-to-understand and accessible.	As stated above, the Program will not be modified to include claim tiers. We propose to address the cost and access issues through CIRO-funded case management and mediation, setting reasonable arbitrators' fees, offering fixed fee arbitration options, and referring unrepresented litigants to *pro bono* legal clinics and lawyers, which will be available for all claims regardless of their dollar value.
A commenter felt that Tier 3 (above $250,000) was broad and would need to be applied with due regard to the size and complexity of the claims.	Thank you. This is one of the reasons why we do not propose proceeding with claim tiers and believe that flexible case management and mediation tools would be more appropriate to address the challenges of the current Program.
A commenter agreed with the principle of tailored procedures, they however recommend that it be amended so that the arbitrator does not direct the parties regarding their witness selection as it may be inappropriate for them to do so.	We do not propose proceeding with the tiered approach. Instead, we believe that witness selection and other procedural issues for all claims (regardless of their complexity and size) could be effectively addressed through active case management.
A commenter stated that costs of arbitration should be proportional to the size of the claim, and that the administrator should have the option to allow or disallow the use of certain tiers, based on principles of fairness and efficiency.	As stated above, the Program will not be modified to include claim tiers. The issues of costs and proportionality could be best addressed through flexible and active case management, reasonable costs of which could be funded by CIRO. In addition, we propose to control costs through setting reasonable arbitrators' fees (e.g., $400/hour) and offering fixed fee arbitration options (e.g., arbitration by written hearing at $3,000 per party, one-day oral hearing at $7,500 per party, two-day oral hearing at $15,000 per party etc.).
Case Management (#10)	
Commenters stated that case management should be piloted as it could be effective in reducing time and costs for the parties.	Thank you, we agree. Case management has proven benefits in advancing dispute resolution processes in courts and arbitration. In arbitration, it involves administrative and procedural oversight

Summary of Comments	CIRO Response
	of the arbitration process, ensuring effective communication between the parties and the arbitrator throughout the process and includes handing procedural matters and logistics. It aims to promote cost-effectiveness and efficiency by streamlining procedures, resolving procedural disputes promptly and avoiding unnecessary delays. We propose to make case management available for all claims in the Program regardless of their dollar value. We anticipate it would be most helpful and frequently used for higher value claims that may require flexible procedural tools and guidance from an administrator or an arbitrator. Case management tools would include, for example, initial conferences to set timelines, establish the scope of issues, provide guidance on disclosure and discovery and the method of production, use of expert evidence, place of arbitration, other preliminary issues, and may lead to mediation. Case management will not deal with substantive matters. Where there is disagreement between parties on the nature of the issue, the case management arbitrator will have discretion to decide if the matter should be dealt with through case management or at an arbitration hearing. Many procedural matters could be effectively managed by an administrator. In appropriate cases, the administrator may assign, at their own initiative or request of the parties, an arbitrator to conduct case management. The arbitrator involved in case management will be different from the arbitrator ultimately hearing the case unless parties consent to proceed with the same arbitrator. Such instances would involve, for example, motions on contested preliminary or procedural matters, and mediation.

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	We propose to pilot case management for the first couple of years of the refreshed Program, e.g., up to 10-20 hours of case management per case, funded from CIRO's operating fund at a predetermined funding cap. The funding will be regularly reviewed and conditional on the effectiveness of the Program.
Mediation (#11)	
Commenters stated that mediation might be a simpler and more efficient way to settle disputes for smaller claims and/or self-represented complainants.	Thank you, we agree. We propose to make mediation available for all claims at the request of the parties and/or case management recommendation. An administrator or a case management arbitrator would be able to identify cases suitable for mediation early in the process and recommend mediation to the parties. The mediation process will be available at any time, before and during arbitration proceedings. It will be voluntary but strongly encouraged if recommended through case management. Please see above for our proposal on case management. If recommended through case management, we propose to offset reasonable costs of mediation (for example, up to a half-day mediation session). Parties will be responsible for additional costs of mediation if unable to achieve a resolution within that time. Funding for mediation would be part of and subject to the same pilot terms as case management described above.
Commenters also stated that the availability of mediation at any time before or during arbitration proceedings is an important and compelling feature of the Program.	Thank you, we agree and intend to offer a flexible mediation process available as discussed above.
Tailored Procedural Tools (#12)	

Summary of Comments	CIRO Response
Some commenters agreed that procedures to triage claims and assist clients would help ease investor confusion about the process while also ensuring that claims are being brought via the most appropriate and cost-effective way.	Thank you, we agree. All claims in the Program will be triaged at the initial stage to ensure they are eligible (*i.e.,* brought by clients of CIRO-regulated firms), meet the thresholds (*i.e.,* above the lower award limit and under the upper award limit or there is consent among the parties to arbitrate above that amount) and an attempt was made to resolve the dispute at the firm level. In all cases, claimants would receive information and, where appropriate, be directed to other dispute resolution options.
Some commenters stated that too much freedom to choose their documentary exchange procedure could put parties, especially the ones with less bargaining power or self-representing litigants, at a disadvantage and suggested that guidelines be provided on the discovery process.	We agree with this comment and, as part of the administrative tools to enhance the Program, we intend to develop general guidance on documentary discovery in the Program. Challenging disclosure and other evidentiary issues could be effectively addressed through active case management, as discussed above.
A commenter disagreed with the recommendation that firms should be required to release all their files to complainants. They stated that the list of relevant documents should be stated at the initial stage of the arbitration and be based on the specific claim. Additional allegations, that would necessitate additional documents, should not be allowed. Procedures should be clear on who can decide whether the documents are relevant.	The relevancy test, used for disclosure in civil courts, is appropriate in arbitration proceedings. A document is relevant if it tends to prove or disprove something that is at issue. Each party must disclose relevant documents that are both helpful and harmful to their position. The disclosure of documents must also be proportionate depending on the issues and complexity of the claim. We intend to reflect these principles in the arbitration rules. Parties may also seek guidance on the relevance of documents through case management. Admissibility of documents will be determined by the arbitrator hearing the matter.
A commenter disagreed that oral discoveries or motions should not be allowed for Tier 1 claims, they argued it should be permitted for all Tiers of claims and asked that guidelines on how to initiate and respond to motions be provided.	As stated above, we do not propose proceeding with a tiered approach. Instead, disputes regarding discovery and other preliminary issues could be effectively resolved through case management, which will be available for all claims. In many

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	cases, parties may not need to bring a formal motion (which would typically result in delays and higher costs) but may be able to resolve their issues at a case management conference. Where a more formal resolution is required, a case management arbitrator may be assigned to either provide guidance to the parties on the process or adjudicate the dispute, but it also could be done with less formality (and therefore be more expeditious and costs effective).
A commenter stated that it may be inappropriate for an arbitrator to direct parties regarding their witness selection because parties have an obligation to put the appropriate witnesses forward, including the proper representatives of the firm, while the opposing party can summons any 'missing' witnesses, and the arbitrator may draw an adverse inference if a material witness is not called.	We propose to address all procedural matters through case management, which will be conducted by an administrator or a case management arbitrator different from the arbitrator hearing the matter. While the responsibility for selecting witnesses rest with the parties themselves, case management can facilitate the process by providing procedural guidance to the requirements for witness lists and statements (i.e., format, timing, content expectations) and assist parties by resolving disputes and objections over witnesses.
A commenter is concerned that the need for expert evidence may prove challenging for self-represented complainants and for those with smaller claims and suggested the burden of costs and finding of experts should not fall on investors.	Thank you, we agree and propose addressing such issues, i.e., need for expert evidence and who is responsible to bear associated costs through case management, which will be available for all claims.
Another commenter stated that an expert report that has not been subject to oral examination should not be admissible, or alternatively, should be given little or no weight, and that exchanging written expert reports without oral evidence is not beneficial to a fair and just result.	We propose to address issues of expert evidence and examination, as well as other evidentiary issues, through case management, which is the most effective way to provide parties with guidance and directions on procedural matters.
Set timeframes (#13)	

Summary of Comments	CIRO Response
A commenter agreed that there is merit to the principle of establishing different timeframes for different claims but noted that aggressive timeframes should not compromise the quality of the decision or recommendations.	Thank you, we agree. We propose to set the ultimate claim resolution limit to 12 months with administrative tools to enforce the timeframes (e.g., administrative dismissal for claims dormant for 6-12 months), but allow flexibility where delays are desirable and reasonable.
Fee Waiver and Subsidy (#14)	
Some commenters supported the Working Group's recommendation to use the Restricted Fund for fee waivers and subsidy for investors otherwise unable to pay for arbitration.	We agree with the Working Group's conclusion that the costs of arbitration are the biggest barrier to investor participation in the Program and have carefully considered the proposal to provide funding for qualified cases to increase investors' access to justice and viability of the Program. We do not however believe it would be appropriate to extend the use of the Restricted Fund to assist individual investors in the Program given its overarching theme of general investor protection, such as administration of CIRO's investor office, an investor advisory panel, hearing panels, emerging regulatory issues, a whistleblower program, investor education, research and other general investor protection initiatives (as set out in s. 16 of **CIRO's Recognition Orders**). Instead, to address the issues of access and costs to make the Program more viable and accessible, we propose to (1) fund reasonable costs of case management and mediation (e.g., up to 10-20 hours of case management per case and a half-day mediation session), (2) set reasonable arbitrators' fees (e.g., $400/hour) and offer a fixed fee arbitration options, and (3) refer self-represented claimants to legal clinics and lawyers offering *pro bono* legal advice.

Summary of Comments	CIRO Response
	In particular, we propose to pilot case management for the first couple of years of the refreshed Program with a reasonable predetermined funding cap. The funding will be regularly reviewed and conditional on the effectiveness of the Program. In addition, to control costs, we are considering offering alternative fee arrangements such as fixed fee arbitration options. For example, expedited arbitration currently offered by ADR Chambers could be suitable for smaller and/or less complex claims. It has strict limitations (i.e., no discovery, no expert witnesses, no motions, up to one hearing day, up to 20 documents in evidence, up to 25 pages of written submissions, up to 3 authorities, up to 2 witnesses per party) but manageable costs. We are considering creating fixed fee options under the Program, which could include, for example, arbitration by written hearing ($3,000 per party), one-day oral hearing ($7,500 per party), two-day oral hearing ($15,000 per party) etc. These options will likely be subject to limitations similar to the expedited arbitration.
A commenter recommended that the Program also provide waiver of arbitration costs for retail investors who have suffered investment loss based on certain factors.	We do not propose proceeding with subsidies and waivers for individual claims for the reasons set out below. Instead, we propose to enhance the Program by making it more affordable, efficient and attractive by funding reasonable case management and mediation costs and other cost-control tools, as discussed above.
A commenter suggested the Restricted Fund also be used for restitution to the complainants in the event a dealer is unable to pay for the arbitration award.	Under the Recognition Orders, the permitted uses of the Restricted Fund do not extend to payment of restitution to investors in case of dealers' insolvency. Given the general purposes of the Restricted Fund (as discussed above), we do not believe it would be appropriate to extend its use to individual investor compensation, particularly where there is no direct link

Summary of Comments	CIRO Response
	between the funds held in the Restricted Fund and the individual losses. In cases of CIRO-regulated dealers' insolvency, client losses may be covered by the Canadian Investor Protection Fund (CIPF). CIRO also reviews all dealers' applications for termination of membership for any outstanding unresolved investor complaints and claims.
A commenter also suggested using the Restricted Funds to provide fundings to investor protection clinics across Canada.	The Restricted Fund is already available for investor education and research projects that are directly relevant to the investment industry, which benefit the public or the capital markets. It is also available and used to contribute to non-profit, tax-exempt organizations, the purposes of which include protection of investors and investor protection clinics.
One commenter did not agree that the Restricted Funds can be used beyond its current focus on investor protection issues and initiatives.	Thank you. Please see our response above.
Publication of arbitration decisions (#15)	
Although most commenters supported the publication of arbitration decisions, as anonymized documents and / or no-name case summaries, they stated that the goal of transparency must be balanced with the need to preserve parties' confidentiality to avoid reputational damage. Commenters agreed that precedents are crucial resources for ensuring access to justice and developing a library of precedents would constitute valuable investor education.	Confidentiality is the key feature of the Program while transparency and precedents help build trust and awareness about the Program. Keeping that in mind, we propose to publish (1) enhanced statistics about the Program's usage (i.e., case volumes per region, type of dealers involved, time to resolution) and detailed key issues and (2) select anonymized case studies representative of the key issues to inform the public and potential users about typical claims that can be resolved through the Program.

Summary of Comments	CIRO Response
A commenter suggested arbitrators could develop a database of decisions rendered in the past 10 years.	There is a clear benefit of maintaining confidentiality of the arbitration process, which we propose to keep in the Program. Arbitrators are commonly referred to by parties in their arguments and have access to court decisions on similar issues. They take them into consideration and rely on as precedents when rendering their decisions. In the future, they may also consult published case studies, as discussed above.
Award limits (#16)	
Some commenters suggested that the Program should be limited to claims above $500,000 as they believe OBSI is better suited for claims under that amount. They also stated that allowing for lower claims in the Program could lead to an overlap with OBSI and investor confusion and could negate the case for OBSI to have a binding decision mandate.	To ensure that investors with claims within the OBSI limit are aware of and try to resolve their claims through OBSI before resorting to litigation, we propose to set the lower limit to access the Program below the OBSI compensation maximum. The current OBSI maximum is $350,000. The Program lower limit would track future changes to the OBSI maximum. Based on our review of the Program and comments received from various stakeholders, we believe it is important to maintain investor choices while avoiding investor confusion. As set out above, the Program and OBSI offer distinct dispute resolution options to investors. There is a broad range of claims under $500,000 that would *not* be generally considered small or lower claims.[9] There may also be claims that fall outside of the OBSI mandate.[10] Under the current Program and as contemplated in the CSA proposal on OBSI's binding authority[11], investors also have a choice to withdraw or abandon their complaint before

[9] Limits on claims in the Small Claims Court are under $15,000 in Quebec and Manitoba, $16,000 in Prince Edward Island, $20,000 in Nunavut and New Brunswick, $25,000 in Nova Scotia and Newfoundland and Labrador, $35,000 in British Columbia, the Northwest Territories and Ontario, $50,000 in Saskatchewan and $100,000 in Alberta (increased from $50,000 in 2023).

[10] See **OBSI Terms of References, Parts 4 and 5**.

[11] *Supra* note 4.

Summary of Comments	CIRO Response
	OBSI[12]. Without access to the Program, these investors would be significantly disadvantaged. We therefore welcome comments on whether the Program should remain available to claims that 1) fall outside of OBSI's mandate/eligibility criteria and 2) where investors had attempted to resolve their dispute through OBSI and withdrew or abandoned their complaint.
Other commenters stated that there is no need for a lower limit and setting the lower cap would be unnecessary and inadequate. They recommended that the Program remain open to claims under $500,00 regardless of the OBSI services as limiting the Program to claims above OBSI's compensation limit would deny investors their choices of a dispute resolution forum, which could reduce confidence in the regulatory system and dispute resolution framework.	We appreciate the need for investor choices in the dispute resolution process. We believe that streamlining and simplifying the process is paramount to ensuring investors can navigate it efficiently and effectively. We therefore welcome comments on whether the Program should remain open to claims that 1) fall outside OBSI's mandate / eligibility criteria and 2) investors who attempted to resolve their dispute through OBSI and withdrew or abandoned their complaint, as contemplated under the new OBSI framework proposed by the CSA.[13] The Program will be available without any limitations to claims above the OBSI limit, currently $350,000, and up to $1,000,000 + with parties' consent. We believe this will ensure that the Program offers a complementary ADR option to investors. Through this structure, we aim to balance the concerns about investor confusion and overlap between the options and uphold the efficiency of the dispute resolution process while respecting the choices and needs of Canadian investors.

[12] OBSI has low case withdrawal rates. See Table 2 - 2018 to 2022 Case Data - Investments Only, **CSA Notice and Request for Comment – *Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service*, November 30, 2023**.
[13] *Supra* note 4.

Summary of Comments	CIRO Response
Some commenters agreed that the Program's cap should be raised to $5 million as it could increase the effectiveness and the viability of the Program. Some would like this recommendation to be implemented immediately to improve the current arbitration process.	Thank you. We have considered (1) increasing the cap to $5 million and (2) removing the cap altogether for claims in the Program. Given the finality of the arbitration process, we believe that the consequences might be too severe for the parties with higher stakes. We have also considered that most claims in the Program in the past years were up to the Program maximum of $500,000 and that client complaints above $1 million (as reported by CIRO dealers) are rare. We therefore propose to double the current cap of $500,000 in the Program, raising it to $1 million. Parties may also agree to use the Program for claims above $1 million, in which case, their arbitration would not be limited by any cap. We believe this is a reasonable increase based on the available statistics and feedback received through the consultation. We may revisit this in the future based on the effectiveness of the revised Program.
The 90-day requirement (#17)	
Some commenters stated that the 90-day requirement is too long and there are no justifiable reasons why firms could not resolve complaints in a shorter period. However, they believed that 30-45 days would be too short and suggested 60 days or 56 days to align with international practices for bank complaint handling.	Currently, the timeline for the provision of a substantive response to clients by CIRO-regulated firms is within 90 days from the date of receipt of the complaint.[14] The access to the Program is conditional on that requirement. Shortening this timeline may compromise the firm's investigation of the complaint and undermine the parties' efforts to resolve the dispute at an early stage to the potential detriment of investors.

[14] The timeline for the provision of a substantive response to client complaints will be reviewed by CIRO as part of a future and separate policy project.

Summary of Comments	CIRO Response
	This timing is also generally aligned with the CSA requirements and requirements for making complaints with OBSI. For these reasons, we do not propose to change the 90-day requirement to access the Program at this time.
Other commenters believed that the 90-day requirement should remain in place as reducing it might compromise the sensible and attentive investigation of investor complaints by firms to the potential detriment of investors and create a hierarchy as to response times for complaint handling with various regulators.	As stated above, we do not propose changing the current 90-day requirement in the Program at this time.