Kenmar Associates
Investor Education and Protection

March 2, 2018

Elsa Renzella
Senior Vice-President, Registration and Enforcement
Telephone: 416-943-5877
e-mail: erenzella@iiroc.ca

Charles Corlett
Director, Enforcement Litigation
Telephone: 416-646-7253
e-mail: ccorlett@iiroc.ca

Request for Comment – Enforcement Alternative Forms of Disciplinary Action 18-0045 February 22, 2018
http://www.iiroc.ca/Documents/2018/dcf3af16-1ea7-4e64-b49b-12e05eb9bce7_en.pdf

Kenmar Associates is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Kenmar is pleased to offer comments on the Investment Industry Regulatory Organization of Canada's ("IIROC") **Request for Comment – Enforcement Alternative Forms of Disciplinary Action** Any attempt to improve Investor protection is welcomed by Kenmar. This Consultation is a Public Interest issue because of its potential impact on investor protection, on other securities regulators, OBSI, insurance regulators and even potentially the FCAC.

Over the years, Kenmar has regularly expressed concerns with many IIROC Hearing Panel decisions and its often lax enforcement record. We have asked for over a decade that enforcement action be taken against discount brokers who receive fees for advice that they do not provide. Also, for nearly 20 years, we have voiced our concern about IIROC's reluctance to enforce NI81-105 provisions. If we believed that the current proposals would result in a more robust enforcement regime we would applaud their introduction. As explained in the following, we are unable to provide support because of the lack of specificity about the proposals in the consultation paper.

The consultation process

- The consultation paper states that IIROC has conducted an **extensive** (emphasis ours) review of programs and best practices adopted by other

regulatory bodies in Canada and abroad. Based on this review, IIROC proposes two new enforcement programs to protect investors We note, however, except for a high level summary Table (Appendix A) the Consultation, does not provide adequate information about the research findings emanating from the extensive review. A full Report would explain why FINRA (a controversial SRO- See this PIABA report *FINRA board rife with conflicts-of- interest* https://piaba.org/in-the-media/finra-board-rife-conflicts-interest-new-report-finds-ann-marsh) was included in the sample and why the highly respected UK FCA was excluded .It is also not clear why sister SRO , the MFDA , was excluded- this needs to be explained .ICE Futures Canada which is designed for effective agricultural hedging with futures and options contracts on canola is part of the benchmarking but it is not relevant to conduct cases. Similarly, The Bourse de Montreal and the Australian Stock Exchange have to do with trading violations not conduct violations. ASIC is included in the APPENDIX table but it is noted that it was least applicable given its other powers to settle cases. The full report would highlight if these programs are actually working to protect investors and what the observed cycle times have been. A copy of the report would in this way allow us to better understand why IIROC is making the proposals it has put out for consultation. So basically the benchmarking re conduct is less than fulsome- more relevant samples are required. Without knowing the context and framework, the APPENDIX table is of limited value. Until we see more data we find it difficult to make an informed commentary on the proposals.

- Another problem with the consultation is the proposed survey of retail investors. IIROC has established an online pool of 10,000 Canadian investors, from which they would consult with about 1000 on these proposals to better understand their needs, experiences and perceptions. As we have said many times before and most recently in the rewrite of the complaint brochure, consumer surveys are not appropriate where subject matter knowledge and understanding of the issue(s) are required to provide meaningful input. Kenmar instead recommend a meeting with a group of informed Investor advocates / consumer groups that comprehend the issues and implications in a Roundtable discussion format. OBSI should be invited as they have experience dealing with IIROC Dealer and dealing Rep wrongdoing and root causes. We also recommend that the MFDA participate because (a) of their experience regulating 80,000 registrants and (b) any changes to IIROC Enforcement practices are likely to impact their processes. A focus group meeting with former Complainants / victims might also provide some instructive insights on the proposals. An online survey of Retail investors has no role to play in these regulatory proposals in our view.
- The wording in a number of areas is too broad for us to interpret .Examples include Staff <u>believes</u> that the MCP would be more applicable and relevant to cases involving individual misconduct; For example, the following factors <u>would generally</u> result in Staff pursuing formal disciplinary proceeding: However, individuals with prior disciplinary records will <u>likely be</u> disqualified from being considered for a MCP Notice and It is also <u>not anticipated that</u>

the MCP would be offered more than once to a particular individual.

- We tried valiantly to obtain answers to our many questions but were unable to get the answers we needed. The last response we received from IIROC stated "I think these are questions are best posed and responded to through the public comment process that we have initiated. " . In other words, try to respond by asking questions in the response. This is why this Comment letter is loaded with questions. We urge the IIROC to examine the Investor-friendly consultation practices of the OSC, the MFDA, Australia's ASIC and the U.K. Financial Conduct Authority.

The Minor Contraventions Process (MCP)

Our comments are based on the understanding that the MCP program will be used solely to replace Cautionary Letters and NOT for cases that would otherwise have proceeded to a Hearing. It seems to us that this proposal is more about fairness towards the Dealer and Dealing representatives than it is to treating clients fairly.

The stated purpose

Per IIROC, the proposals would allow for more tailored enforcement responses and ensure enforcement actions are fair and proportionate to the particular circumstances of cases under investigation.

Staff also believe these proposals will create operational and procedural efficiencies by promoting more timely resolution of certain cases while also freeing up resources needed for larger and more complex cases. No metrics are provided to support these anticipated improvements. "By providing the option for more tailored responses, IIROC believes these proposals will assist in deterring wrongdoing in a fair and proportionate manner". We're not sure what "deterring wrongdoing in a fair and proportionate manner" actually means – either the proposals will deter recurrence or they will not. In any event, the paper does not explain the rationale as to how modest fixed dollar fines, imposed anonymously will improve deterrence over current processes.

So will an MCP Notice improve general deterrence? In principle, General deterrence is a sentencing objective which aims to discourage persons other than the offender, from committing a similar offence. Deterrence is considered credible when organizations and individuals perceive the risks of engaging in misconduct to outweigh rewards and are thereby deterred from such misconduct. As a part of credible deterrence, enforcement efforts should also send clear messages that discourage non-compliant attitudes and conduct. We are not convinced that the MCP program has the necessary transparency to send that message. (see IOSCO https://www.iosco.org/library/annual_conferences/pdf/40/Stephen%20Glynn%20-%20Credible%20Deterrence%20report.pdf IOSCO *Credible Deterrence.*
General deterrence can serve to improve overall standards in the securities industry and increase investor protection but does IIROC have a basis to demonstrate that the MCP program as proposed will be effective? Other than a declarative statement, no concrete rationale is articulated in the consultation that MCP Notices will deter

wrongdoers.

On a quarterly basis, Staff plan to issue a public notice setting out all matters resolved by way of MCP Notice, specifying the contravention and a summary of the facts set out in the MCP Notice without identifying the Approved Person or Dealer. IIROC's proposal contemplates that MCP notices will not form a part of any formal disciplinary record. As such, offenders who make admissions pursuant to the MCP would not be required to disclose the MCP notice as a part of their disciplinary history to investors. We assume however that the annual Enforcement report will provide the summary statistics. There has been a global trend in improving transparency by securities regulators particularly transparency of regulatory sanctions. Such transparency is essential in maintaining public trust in regulators and in the regulatory system. See OECD Report http://www.oecd.org/gov/regulatory-policy/1901290.doc?TSPD_101_R0=50dd1bfcb7fe324d31c040341401bc61slg00000000000000007999e740ffff00000000000000000000000000005a9734030071e8cae2 *PROMOTING FAIR AND TRANSPARENT REGULATION* *"Regulators should issue and make available to the public final regulatory actions and the basis for those actions, in order to enhance public understanding thereof".*This proposal seems to take a step backward in with-holding sanction information from public view. We do not understand why anonymity is required or desirable.

The MCP criteria

Staff will consider the following criteria in making a determination about whether a contravention of IIROC requirements may be resolved by way of a MCP Notice:

1. the contravention is technical;
2. the contravention is an isolated incident;
3. the contravention resulted in:
    - limited or no harm to clients or other market participants;
    - limited or no harm to market integrity or the reputation of the marketplace;
    - limited or no benefit to the firm or individual engaged in the conduct or any related parties; and
4. the conduct was unintentional or inadvertent.

If the above criteria are met, Staff will also consider additional factors such as whether: 1. the conduct is admitted; 2. the conduct is self-reported; 3. the conduct has been the subject of internal discipline by the Dealer Member; 4. corrective or remedial measures were taken in response to the

contravention; and 5. there have been voluntary acts of compensation, including voluntary disgorgement of commissions, profits or benefits.

It seems to us that the MCP program is not really applicable to Dealers.

Investors do not want a settlement process that ignores minor violations, and waits for the big one that brings media attention. Instead, they want an enforcement process that recognizes that even the smallest infractions have victims, and that the smallest infractions are very often just the first step toward bigger ones later on. It remains an open question therefore whether walking away from the "broken window" theory will be successful. Minor violations that are downplayed can feed bigger ones, and, perhaps more importantly, can foster a culture where laws, regulations and rules are increasingly treated as toothless guidelines. See speech by SEC Chair Mary Jo White https://www.sec.gov/news/speech/spch100913mjw

It is not clear whether the first 4 criteria must all be met or if just one is sufficient to resolve an issue via a MCP Notice. Each word counts so what exactly is meant by "technical"," isolated incident ", "unintentional", and "limited client harm? How much client harm will be considered "limited"? For instance will it be confined to monetary harm or will it include more subjective factors, such as the impact of the misconduct on a client's life (from an emotional, physical and/or mental perspective)?. This is a major consideration for seniors.If there is investor harm, will the affected clients be notified?

If a Dealing Rep utilizes a blank-signed form or falsifies a signature is that going to be considered minor if it was done for the convenience of clients? If the contravention involves multiple clients, will that negate the possibility of a MCP Notice? IIROC must provide illustrative examples of how it intends to interpret these terms so commentators have a better sense of IIROC's thinking. Among investor advocates, there is a concern that this proposal could be a form of legitimizing wrist slap penalties

As to the other 5 criteria, will an MCP apply if the dealer/Rep attempted to mask the wrongdoing? What about other aggravating factors such as cases involving vulnerable investors? If clients lost money, will clients be made whole? If there is disgorgement of commissions/ profits, will that money be returned to clients or will it be retained by IIROC? [disgorgement is rarely used by IIROC – in 2017, just $100K was imposed on firms; in 2016 not a single dollar was imposed] Will respondents have to pay in full in say, 10 days? Will credit cards or extended payment terms be permitted? What happens if payment is not made?

An admission of wrongdoing may be a mitigating factor if it saves IIROC and affected clients from a lengthy, complicated or expensive hearing without compromising investor protection. The extent of the cooperation provided by a Respondent during the course of the investigation of the misconduct could also be a mitigating factor. However, any attempts by a Respondent to frustrate, delay or undermine the investigation would have to be considered as aggravating factors and thereby nullify use of MCT. We recommend that aggravating factors be given

more prominence in settlement agreements. See *Aggravating and Mitigating factors and Associated Issues*
http://www.canadianfundwatch.com/2018/01/agravating-and-mitigating-factors-and.html

The consultation states that currently, after an investigation is completed, Staff can close a matter with no action, initiate formal disciplinary proceedings or issue a Cautionary Letter.

Per the consultation "A Cautionary Letter represents Staff's opinion that an IIROC requirement may have been contravened and outlines Staff's concerns about the conduct. A Cautionary Letter has limited value. It provides Staff with historical information about a particular Approved Person or Dealer Member and it may be a factor considered in commencing a future investigation or prosecution. However, a Cautionary Letter has no legal effect and does not constitute a finding that an IIROC requirement has been contravened. The deterrent effect of a Cautionary Letter is minimal and it does not materially enhance confidence in IIROC's enforcement efforts." We agree with this. In fact, very few Cautionary letters are issued- in 2016 there were just 2 and in 2017 none were issued to firms (for Reps there were only 7 in 2016 and just 1 in 2017 -Source Enforcement Statistics http://www.iiroc.ca/industry/enforcement/Pages/Statistics.aspx It is not clear from the consultation if Cautionary Letters would be replaced by the proposals or would continue as an available sanction.

IIROC Annual Enforcement reports always included reference to Warning letters as part of the SRO's enforcement tools until the 2015 report when it stopped referring to Warning letters. As recently as the 2014 report, IIROC included the number of Warning letters in the reports of specific penalties levied. In the 2016 Report reference is made to Cautionary Letters. Yet in this consultation proposal there is no reference to Warning letters. Has IIROC abandoned the use of Warning letters? Is there a reason why IIROC didn't use the MFDA as a comparator particularly since the MFDA use Cautionary letters just like IIROC and they also use Warning letters just like IIROC used to do until they apparently stopped using them in 2015 - we are very surprised IIROC did not consider the MFDA experience. The MFDA distinguish between Warning Letters and Cautionary Letters: Warning Letters are issued in circumstances where the violation is one that the MFDA could have escalated to a formal disciplinary hearing, but due to the existence of screening factors, has chosen not to. Cautionary Letters are issued when the violation is less serious in nature and one that the MFDA would not generally escalate to a formal disciplinary hearing. Both types of Letters are reported separately.
[Unlike the MFDA, IIROC do not differentiate between Cautionary and Warning Letters].

Fines

Under the proposed minor contravention program (MCP), individuals that commit minor rule infractions - assessed based on whether they're technical breaches, isolated incidents, unintentional, and caused limited harm to clients and the

marketplace and limited benefit to the firm - would be fined $2,500, while firms would be fined $5,000. First off, if the breach was an honest mistake, unintentional or due to poor dealer training it is not clear to us why any fine should be applied to an individual. IIROC should explain how it came up with the numbers chosen and the mechanism to adjust them over time. As to dealers, a fine of $5000 is just nuisance money, the cost of doing business. We recommend a minimum range of fines from $ 15,000 to $25,000 for Dealers if this proposal is approved.

Consideration of Other Alternatives

The Consultation paper does not reveal what trade- offs and alternatives, if any, were considered in concluding that the proposed MCP Program is optimal .We provide some alternatives from the Retail Investor perspective for IIROC consideration.

If IIROC does not have the necessary resources to support its mandate an increase in budget may be the preferred solution.

The solution to cycle time and workload may be more basic. Perhaps increasing fines will decrease the number of cases.

We also have a key question. Based on historical data what is the estimated number of annual cases on average that fall under the proposed regime? This is important for us to know as the proposal is to shield these from the NRD and other public disclosure. The greater the number, the more reluctant we would be to support this initiative. Numbers are required to evaluate the proposal.

"When you can measure what you are speaking about, and express it in numbers, you know something about it, when you cannot express it in numbers, your knowledge is of a meager and unsatisfactory kind; it may be the beginning of knowledge, but you have scarcely, in your thoughts advanced to the stage of science." – famed English Scientist Lord Kelvin

All in all, there is insufficient basis to make definitive comments on the MCP proposal.

Early Resolution Offers

Kenmar has in the past been critical of IIROC Hearing Panel decisions, Enforcement practices, client complaint handling, dealer compliance monitoring, dealer complaint handling rule 2500B, corporate governance and the lack of an Investor Advisory Committee. In addition, recent CSA Oversight Reports on IIROC operations were less than glowing. We therefore approach the ERO proposal with a cautionary eye.

It appears clear that IIROC staff are frustrated at the failure of its reasonable attempts to accelerate the settlement process. IIROC is now willing to settle for substantially less in order to speed up the process. This does not surprise us as it is these same dealers that have lowballed or rejected even fair settlement

recommendations from OBSI. Kenmar also experience an adversarial posture from IIROC dealers in our work in assisting victims of financial assault seeking redress. We question whether buckling under to such bad behaviour is the appropriate regulatory response and have accordingly provided some alternative ideas to reduce the number of cases and improve investor protection.

IIROC is proposing the use of Early Resolution Offers (EROs), which would allow cases to be settled at an earlier point in the enforcement process once sufficient evidence has been laid out and certain conditions are met. If this is allowed, IIROC says it could address wrongdoing more quickly by reducing the time needed to complete cases; at the same time, firms could be encouraged to take corrective action and compensate clients on their own. An Early Resolution Offer will, according to the Consultation, constitute Staff's best offer by granting substantial credit in the determination of the fine and costs sought in exchange for entering into a settlement agreement.

First off we have no idea what offering a "substantial" credit really means (5%, 10%, 50%, 80 %?) and have not been provided any reason to believe that such discounted fines will act as specific or general deterrents to future wrongdoing .

If the offer is IIROC's best, we assume it means it can't get better via negotiation. Yet the consultation paper says "While an Early Resolution Offer may be subject to negotiation between Staff and the respondent, the time for acceptance of the offer would be strictly time-limited…". There appears to be a contradiction here.

IIROC have listed 7 criteria necessary to allow its members to short-circuit the disciplinary process. We comment on these in later paragraphs but would like to add a few items for IIROC consideration that would block dealers from unduly bypassing the established system. These include but are not limited to:

1. Any dealer on IIROC's Watch List
2. Any case involving fraud, gross negligence amounting to fraud or outright theft
3. Any case involving document adulteration, forgery or signature falsification
4. Any case where the target victim(s) were vulnerable investors/ seniors/ retirees
5. Any dealer with a history of exploitive Complaint handling or has been Named and Shamed by OBSI
6. Any case involving systemic financial assault
7. Any Rep or dealer currently under close supervision or third party monitoring

ERO's are negotiated between IIROC and its Members and discussed in private and may result in fewer precedents for investors to use as a basis for future actions or for regulated parties to rely on in protecting themselves. Because of this process, certain types of misconduct may never come to light, remaining opaque by virtue of an ERO. This streamlined process can allow perverse incentives to develop. Canada 's investment dealers could believe that if they engage in egregious misconduct, conduct that breaches IIROC rules and securities laws , all that needs to be done is to pay a discounted negotiated voluntary fine to the IIROC. They can rest assured that the market will lack a factual, detailed account of events, and they avoid a

major reputational embarrassment. Does IIROC believe this is in the Public interest?

As far as the 7 criteria, we would expect any and all disgorgement to go to the victim(s) not to IIROC [in 2017, just $779K was imposed on individuals; in 2016 a miniscule $24K] Given the hard facts, we cannot see how disgorgement is acting as a specific or general deterrent for either individuals or firms under the current system. Why then should one conclude it will work better under the proposed lightweight ERO system? For us to even consider such a system, investor redress would have to be mandatory with client compensation calculated using OBSI's Loss calculation methodology. There must be no constraint on the use of OBSI or change in its processes as a result of this proposal. As far as the applicability of internal sanctioning as a criterion we feel it is largely irrelevant with the possible exception of termination for cause.

Relationship to Sanction guidelines
(http://www.iiroc.ca/industry/enforcement/Documents/IIROCSanctionGuidelines_en.pdf)

IIROC's Sanction Guidelines are 100% Principles based. The Sanction Guidelines, revised in 2015, did away with the minimum fine requirements and/or prescribed fine ranges They are, according to the Guidelines intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives. The general principles and key factors set out in the *Sanction Guidelines* are not intended to fetter the discretion of a Hearing panel in determining an appropriate sanction. The language in the Guidelines makes it very evident that neither Staff nor Hearing Panels are to be constrained in any manner in their decision making. We have been publicly critical of these Guidelines as well as to how they are applied in practice because we believe the primary intention should be to make sanctions act as deterrents to future bad behavior and protect investors as opposed to providing broad discretionary decision making elbow room. Under the existing Guidelines, Hearing panels retain the discretion to impose the sanctions they consider appropriate so it is possible that the ERO initiative could be ignored. The ERO proposal appears to undermine the principles behind IIROC's Sanction Guidelines by offering substantial discounts for going along with IIROC's findings of wrongdoing without making a fuss. This doesn't seem right.

The majority of Enforcement actions are taken against individuals despite the fact that the root causes of wrongdoing are primarily due to Dealer actions and inactions. Mitigating factors routinely outnumber aggravating factors. Disgorgement is not used effectively or fairly. As Napoleon often said" ***There are no bad soldiers, only bad Officers***". We therefore believe that IIROC must adjust its enforcement strategy by holding its dues paying Membership more accountable and having them pay the full price of their wrongdoing, not less. We believe this approach, applied with determination and vigour, has a far better chance of long-term success in changing industry behaviour/culture and improving investor protection than the ERO proposal put forward.

Consideration of Other Alternatives

It has been our observation that IIROC does not sanction dealers as much as it should. After all, the root cause of the vast majority of wrongdoing can be attributed to poor dealer training programs, weak internal controls, lax supervision and dealer compensation programs designed to drive sales. If dealers were held accountable for the actions and inactions of their representatives it is very likely behavior and culture would change resulting in far less cases to adjudicate.

ILLUSTRATIVE EXAMPLE: On Jan. 31, 2018, a IIROC Hearing Panel accepted a Settlement Agreement, with sanctions, between IIROC staff and Ula Hartner. The case involved churning and unauthorized trading. Ms. Hartner agreed to the following penalty: a) a fine of $40,000; and b) a suspension from registration in any capacity for 18 months. Four clients were impacted. Client GY lost approximately $232,196 on an initial account equity value of approximately $259,000- the loss included approximately $72,426 in commissions. Between Jan. 2015 and May 2016, Hartner placed 935 orders. Between Oct. 2015 and May 2016, the Rep placed 624 orders for the WR Account. As a result of these orders, WR lost approximately $254,195 on cash deposits of approximately $400,000. This loss included approximately $22,101 in commissions and approximately $4,560 in managed account fees. Between Oct. 2015 and May 2016, Hartner placed 130 orders for the AP & RB Account. As a result of these orders, the AP & RB lost approximately $27,384 of the total cash deposit of $30,000. This loss included approximately $13,824 in commissions. So for a period of about 15 months whoever was supervising Hartner didn't pick up on the 1689 transactions for the 4 clients and the huge commissions they were being charged. If the Dealer had acted promptly, this financial assault could have been prevented. According to the Settlement Agreement, Hartner didn't really know what she was doing in implementing the complex options strategy suggesting inadequate Dealer training and improper approval to engage in a risky options strategy for clients. It is our firm conviction that **the root cause of this financial fiasco is the Dealer National Bank Financial Ltd.** who should be held accountable for the actions of its employee.
Source: http://www.iiroc.ca/documents/2018/9A9D5747-515A-4F3D-99CB-C82FB5FE756F_en.pdf Note that the fine is less than the commissions received and there has been no disgorgement of the commissions received by the Dealer and its representative. Is there really any specific or general deterrence here?

It has come to our attention that when IIROC apply a disgorgement sanction on an individual it does not seek to retrieve that portion of the commission that the Dealer retained. It is our belief that all benefits derived from wrongdoing should be disgorged not just the fraction the firm paid to its representative. If this were consistently done, we believe it would act as a deterrent and help reduce the case load for IIROC enabling it to concentrate more on other bigger issues harming retail investors.

Another alternative is for IIROC to add numbers to its principled sanction guidelines as FINRA and the MFDA have done. If these numbers are meaningfully increased, it could very well result in less wrongdoing and hence less cases for IIROC to work on. That would be effective deterrence.

The OBSI relationship represents a unique opportunity for IIROC. As a member of the JRC IIROC has exposure to exceptional feedback data resulting from "failures" in the regulatory system. From its meetings with OBSI staff, IIROC can examine the root causes of complaints and thereby make adjustments to its rules and compliance monitoring practices. By preventing complaints, the workload on IIROC staff will be reduced so they can concentrate on the bigger cases and systemic issues. A strategic role of OBSI is in fact a key recommendation of the Battell Report which the OBSI Board has already agreed with. Such an approach would be a WIN- WIN for all stakeholders.

Finally, there is this bold alternative- elimination of advice-skewing compensation for Dealing Reps. If IIROC resolve the compensation-related conflicts it found in its research http://www.iiroc.ca/Documents/2017/5365cb5b-e384-477f-8fc0-8c2b9450424a_en.pdf it will dramatically cut down on the number of cases thereby giving Staff more resources to work on the larger cases and systemic issues. Prohibiting practices like non - neutral compensation grids, huge bonuses based on sales, sales quotas, manager/ supervisor compensation tied to sales targets, accelerator payouts and deferred cash and equity awards will significantly reduce the sale of unsuitable investments, improper leveraging / margin , account churning and unduly / exploitive high fee account structures . This will free up resources for more important IIROC tasks. [We appreciate that IPO's are really a distribution process so a carve out will be required]

Bottom Line

We are delighted that IIROC is pro-actively examining its Sanction practices and processes. The feedback from this consultation should provide the IIROC Board with many ideas for improving investor protection, cycle time reduction and Staff effectiveness. Dealing with Rule breaches is a necessary but inadequate action for robust securities regulation. For example, a manufacturer may have a great final inspection system to sort the good from the bad but it also needs to prevent defects by taking corrective action based on observed failure data. This is why dependence on sanctions and deterrence needs something more.

We believe it is rooted in a culture change at its Member firms. This can be achieved by focusing on creating a culture of compliance. See *A Call for Sentencing Enforcement Reform in Ontario Securities Regulation: Restorative Justice, Pyramids and Ladders.* by Professor Anita Anand https://tspace.library.utoronto.ca/bitstream/1807/33295/3/Lo_Daniel__201211_LLM_thesis.pdf She advocates for adoption of a three stage enforcement reform process that incorporates restorative justice through an enforcement pyramid and

an enforcement priority ladder. The end goal is to provide useful recommendations to the OSC and other Canadian securities regulators in achieving a more self-sustaining and investor focused securities regulatory environment. The role of the OSC she argues needs to evolve from deterrence-based enforcement efforts to one that equally embraces strategies for developing "compliance cultures" within market participants in order to be more effective, such as restorative justice sanctions. We believe the same logic applies to IIROC.

We do not feel a convincing case has been made for adoption of either of the two proposals. As mentioned earlier, the lack of backup to support the proposals is a key culprit.

We have provided objective observations, asked legitimate questions, requested more information, made informed comments, expressed deep concerns, offered positive recommendations and constructively suggested viable alternatives. It is now up to the IIROC Board whether it wants to develop these concept proposals further.

Kenmar take this opportunity to once again request that the IIROC Board consider the implementation of an Investor Advisory Committee (IAC). It is our firm conviction that an IAC will be of great value to the Board and will help balance the voluminous input regularly delivered by industry participants. [The FINRA Investor Issues Committee is composed of subject matter experts, including academics, consumer advocates, former securities regulators, institutional investors and individuals affiliated with non-broker-dealer asset management firms https://www.finra.org/about/committees]

We greatly appreciate the opportunity to provide an input to this Consultation.

We apologize for not presenting a more fulsome commentary but information gaps in the consultation paper prevent us from providing the quality of feedback you deserve.

Kenmar agree to public posting of this Comment letter.

We would be pleased to discuss this Comment letter with you at your convenience.

Please feel free to contact me regarding this issue.

Sincerely,
Ken Kivenko P. Eng.
President, Kenmar Associates