

April 5, 2019

**Proposed Amendment to IIROC By-law No. 1 Regarding Director Term Limits**

[https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc\\_20190404\\_iiroc-notice-19-0060.pdf](https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20190404_iiroc-notice-19-0060.pdf)

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Kenmar appreciate the opportunity to comment on subject proposals.

Kenmar is an Ontario- based privately-funded organization focused on investment fund investor protection via on-line research and education papers and Investor ALERTS hosted at [www.canadianfundwatch.com](http://www.canadianfundwatch.com) . Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing investor protection issues primarily for retail investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, retail investors and/or their counsel in filing complaints and restitution claims. Additionally, we are active in regulatory affairs and regularly participate in public Consultations. Through these engagements we are able to take the pulse of investor protection in Canada.

The objective here seems to be good succession planning and orderly board renewal. The MFDA already has this provision to deal with unintended consequences of board member resignations mid-term on their term limits of their replacements, We don't see any reasons not to support this proposal.

While the mechanics of Board design are important, we take this opportunity to once again raise the critical issue of Board composition.

IIROC operates under a Recognition Order from the CSA. In effect, IIROC is the principal national regulator for retail investors. Recently, it has been given additional powers approximating those of a statutory regulator but it remains an industry self-regulator.

IIROC says " **The IIROC Board has never operated as a "stakeholder" Board in which Directors consider their sole role to be representing the specific interests of the stakeholder groups from which they are drawn. Instead, IIROC Directors act under the broader fiduciary duty that they owe to the organization and its stakeholders as a whole."**

[http://www.iiroc.ca/about/Documents/2014GovernanceReviewReport\\_en.pdf](http://www.iiroc.ca/about/Documents/2014GovernanceReviewReport_en.pdf)

Of course, the sole role should not be investor advocacy but a retail investor-centric Director would present the retail investor perspective –a grass roots representation – to the Boardroom in its deliberations.

It is patently obvious that the Industry Directors are not mere bystanders and are stakeholders properly articulating the interests and concerns of the financial services industry. That is why a certain number of Board positions have been reserved for them.

Accordingly, we strongly recommend that the IIROC establish qualifications criteria for at least one member of the board, if not more than one, demonstrating expertise and experience in prevailing retail investor issues. The addition of this voice will be a positive for retail investor protection. We include a suggested description of such a skillset in APPENDIX 1

We also recommend that the Board establish an Investor Issues Advisory Committee along the lines of the OSC IAP or FINRA. We feel this will make IIROC more accountable in satisfaction of its Public interest mandate.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Kenmar Associates agree to public posting of this Comment Letter.

Respectfully,  
Ken Kivenko P. Eng. (retired)  
President, Kenmar Associates

## **APPENDIX I: Specification for a Retail investor Board Director**

We present here a proposed specification for the Retail investor/consumer Director.

In addition to the general qualifications befitting a Director we would add the following unique characteristics:

### **1. Credibility amongst investors/ advocate stakeholders** - including:

- A track record of advocating for increased investor protection for Canadians
- Actively and visibly engaged with prevailing investor protection issues
- Demonstrated ability to co-operatively work with the OSC Investor Advisory Panel, investor/consumer protection groups, seniors associations etc.
- A good knowledge of technology/software/mathematics
- Constructively assertive and forthright
- Respected and trusted by retail investors

### **2. Knowledge of retail investor issues** – including:

- An understanding of regulatory system failures and weak spots
- Familiarity with key standards and principles for fair complaint resolution and restitution
- Published articles and/or blog related to retail investor protection
- A grass roots connection to the retail investor

Empathy for the retail investor

3. **Credibility with industry stakeholders** -including

- Working knowledge of the Canadian financial sector and retail services/products
- Basic knowledge and understanding of applicable Canadian rules and regulations applicable to personalized advice giving
- an understanding of the underlying issues related to KYC, risk profiling practices, disclosure and suitability.
- Seen as objective and fact-based

REFERENCES

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