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**Request for Comment Minor Contravention Program (MCP) and Early Resolution Offers (ERO) Initiative**

[https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc\\_20190425\\_notice-rfc-minor-contravention-program.pdf](https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20190425_notice-rfc-minor-contravention-program.pdf)

Kenmar Associates appreciate the opportunity to comment on the Investment Industry Regulatory Organization of Canada's ("IIROC") Request for Comments regarding the MCP Program and ERO initiative. 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.

**General comments**

Misconduct should have a light shone upon it and expediency and efficiency should not be of primary importance. It is not obvious to us why an early settlement policy is the optimum approach to adopt for an industry with an ethical track record like that of the wealth management industry.

The IIROC National Survey

[http://www.iiroc.ca/industry/enforcement/Documents/IIROC-Alternative-Discipline-Investor-Survey-2018\\_EN.pdf](http://www.iiroc.ca/industry/enforcement/Documents/IIROC-Alternative-Discipline-Investor-Survey-2018_EN.pdf) found that just 24% of investors surveyed were "very" supportive of an early settlement program. Comment letters from the OSC IAP, FAIR and ourselves on the earlier consultation also lacked support for the proposals as presented.

Kenmar Associates 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. It will lead to more effective and balanced policy setting.

### Observations on IIROC Enforcement

In order to provide context to our commentary we provide a brief overview of our viewpoint on IIROC enforcement.

Kenmar have been constructively critical of IIROC Hearing Panel decisions and generally lax enforcement for some time. For example, for over a decade we have asked for enforcement action on discount brokers who are paid to provide advice but don't. We have also been disturbed at the lack of enforcement of NI81-105 provisions for nearly 20 years.

Kenmar believes that robust enforcement is a key part of an effective investor protection framework and essential to the securities regulatory structure. We support IIROC in reviewing the effectiveness of its enforcement program in order to better fulfil its mandate of protecting investors and supporting healthy capital markets across Canada. Kenmar however note a definite trend downwards in the number of prosecutions and the heavy emphasis on individuals. Source: 2017 IIROC Enforcement Report.

#### Prosecutions – by Respondent Type



We also observe that individuals are sanctioned much more frequently than firms even in instances of repeated wrongdoing by individuals which should have been detected by the Dealer, suggesting a lack of effective dealer supervision/ compliance oversight as the root cause of many client complaints.

IIROC openly admit that they have always encouraged early settlement of cases.

IIROC also reveal that Settlement agreements are typically reached “....after extensive negotiations between Staff and the respondent have taken place”. IIROC negotiating skills are clearly a critical success factor in enforcement. The Sanction guidelines are only a rough guide to what is fair and reasonable. This explains a lot about the frequency and severity of IIROC enforcement actions. Until this protocol changes, the advice industry will remain **Caveat Emptor**.

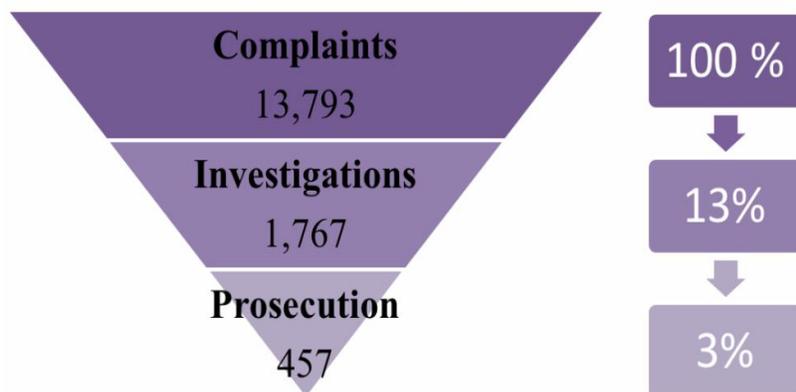
The infamous double billing scandal is a prime example of majestic industry misbehavior and lax IIROC enforcement oversight. A quick scan of this chart shows how widespread the overcharging was and for how long.



To this day, we do not know how or why IIROC failed to detect such a massive systemic issue over a period exceeding a decade. We do not know if it could happen again. It is systemic issues like this that the Board should prioritize, not controversial tools that potentially weaken deterrence and investor protection.

A number of commenters have also remarked at the relatively low level of complaints that reach prosecution. We urge the IIROC Board and the CSA to read *An update on self-regulation in the Canadian securities industry (2009-2016): funnel in, funnel out, and funnel away* By Mark Lokanan

Figure 4: Number of complaints that reached investigation and prosecution in 2009-2016



The paper can be found at [https://viurrspace.ca/bitstream/handle/10613/6069/IIROC\\_Funnel\\_Study\\_JFRC.pdf?sequence=5&isAllowed=y](https://viurrspace.ca/bitstream/handle/10613/6069/IIROC_Funnel_Study_JFRC.pdf?sequence=5&isAllowed=y) . It provides strong evidence supporting the need for improved and intensified IIROC enforcement.

It's not just lax enforcement, there is also a question on the severity of penalties. We consider many sanctions as modest, even wrist-slap. There is also excessive dependence on negotiation of penalties with Members.

We often see Settlements where mitigating factors swamp out legitimate aggravating factors resulting in unduly lower penalties. See *Aggravating and Mitigating factors and Associated Issues*  
<http://www.canadianfundwatch.com/2018/01/agravating-and-mitigating-factors-and.html>

Some other concerns: We are of the firm conviction that signature forgery should result in de-registration-it is a form of fraud- it contaminates the core advice process. We argue that a fine should not be smaller than the amount of commissions received via abusive sales practices. Kenmar also posit that reverse churning merits greater enforcement attention and increased fines. To our knowledge, IIROC do not have a rule or even guidance on this growing account conversion epidemic facing retail investors, especially seniors with significant assets.

It is almost impossible to claim general deterrence under the current regulatory regime. The regime rarely gets to root causes; too often it treats symptoms, not root causes. The root causes of failures are fundamental system failure mechanisms that if not addressed, will continue to fail. Examples include advice-skewing compensation plans, weak supervisory systems, flawed complaint handling processes, ineffective compliance oversight, deficient risk profiling tools, inadequate Rep proficiency, poor employee training and title inflation. This is why every sanction must go beyond fines and include a real corrective action plan to prevent recurrence. There is no evidence that fines alone are protecting retail investors.

### **The Minor Contraventions Process (MCP)**

We did not anticipate seeing the MCP proposal revived as it was our expectation that the increased fine collection powers granted to IIROC by provincial governments would be more than sufficient to bring about faster settlements with individuals and improve the deterrence value of monetary sanctions. IIROC have been advocating for its legal authority to be enhanced on the basis that it could more effectively and consistently enforce its rules and discipline those who break them and harm investors.

IIROC says "The Proposed Amendments and the Staff Policy Statement would

expand the options available to IIROC Enforcement Staff (Staff) to **address** [as opposed to deter; our comment]; wrongdoing in a fair and proportionate manner. The MCP would provide a more efficient means to resolve cases that cannot be adequately addressed by way of a Cautionary Letter but do not warrant formal disciplinary proceeding". [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. In 2018, there were just 9 imposed on individuals -Source Enforcement Statistics  
<http://www.iroc.ca/industry/enforcement/Pages/Statistics.aspx> ]

Under MCP, the fine for Reps will be \$5000 and cases will need to be approved by a one-person Hearing panel chaired by a Public Director. Dealers will not participate in the MCP program which is what we had recommended.

If new benchmarking was utilized for this Consultation, it should be made public. The MFDA was not benchmarked apparently because they do not have similar programs. All cases run are through the same process. The previous benchmarking provided was inadequate as pointed out in numerous Comment letters.

IIROC propose that an MCP not be considered a disciplinary proceeding for the purposes of National Instrument 33-109 *Registration Information* and would not need to be disclosed on an Approved Person's Form 33-109F4. MCP proceedings will be kept secret other than as set out in section 1.4.4. Staff would be permitted to rely on the admission at a future disciplinary proceeding involving the Approved Person, if warranted, as an aggravating factor. While the Canadian securities administrators and other Canadian self-regulatory organizations would have access to MCP information, retail investors using AdvisorReport would not.

MCP's raise concerns about enforcement. Settlements are negotiated between IIROC and Reps 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. This streamlined process can allow perverse incentives to develop. Reps can rest assured that the public will lack a factual, detailed account of events, and they avoid a major reputational blow. How is this in the Public interest?

MCP seems to be more about fairness towards the dealer and registered representative as opposed to protecting investors. The focus is on sanctions, not eliminating root causes of wrongdoing. So, will an MCP Notice improve general deterrence? We just don't see that happening with MCP because Reps are shielded by anonymity and the \$5K fine is perceived as a Get Out of Jail free pass.

IIROC would report on their website the number of MCP Agreements accepted each calendar year. They would also issue a quarterly public notice specifying the contravention and a summary of the facts set out in each MCP Agreement, without identifying the name of the Approved Person. At a minimum, we recommend the name of the Dealer be disclosed so that reviewers can assess whether a particular dealer's Reps incur an unusual number of MCP Agreements. We also recommend

that the calendar year report include information on the 4 prior years so trends can be made visible. Given the minimal disclosure, it is not obvious that deterrence under MCP will be robust. MCP is basically a "burden" reduction initiative for Reps and IIROC. Quite frankly, we do not see any material improved investor protection component in the proposal(s).

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 [www.oecd.org/gov/regulatory-policy/1901290.doc](http://www.oecd.org/gov/regulatory-policy/1901290.doc) 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 withholding sanction information from public view.

We do not understand why anonymity is required or desirable. Kenmar believe that the investing public has a right to know about the nature and extent of disciplinary action in relation to their advice givers misconduct and cannot accept the anonymity proposed under MCP. This was the position taken by FAIR, the OSC IAP and ourselves in response to the earlier consultation. The IIROC National Survey also found that a majority (56 %) believed that IIROC should publish the names of firms or individuals in all cases of rule breaches, including minor violations.

#### 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;
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.

Each word counts so what exactly is meant by "technical", "isolated incident", "unintentional", and "limited client harm"? What is the operational definition of "limited client harm"? 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/vulnerable investors (Seniors account for almost 40 % of all cases reviewed and approximately 30 % of prosecutions involve investors age 65 and over ; the associated IIROC survey population sample was just 17% ).If there

is investor harm, clients should be notified. To be eligible, there should be no harm or loss to clients or if there was harm to clients (which must be modest in amount) it must have been compensated for fully including interest and fees.

If a 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 interprets 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

Will Reps 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? Will Hearing costs be assigned to MCP cases?

The consultation is scarce on quantitative information. Based on historical data, what is the estimated number of annual cases on average that would fall under the proposed MCP Notice regime? This is important for us to know as the proposal will shield these cases from the NRD and other public disclosure. How are such cases being handled currently- are they ignored? The greater the number, the more concerned we would be re investor protection.

#### Fines under MCP

Under the proposed minor contravention program, individuals would be fined a fixed dollar amount- \$5000 (IIROC should define the mechanism that will be used to adjust the fine dollar amount over time.). If the rules breach was an honest mistake, unintentional, inadvertent or due to poor dealer training/tools it is not clear to us why any "fine" should be applied to an individual employee. [in 2017, the average fine levied on individuals was \$92K]

An example would be holding a Rep responsible for mis-selling reverse ETF's when the dealer has authorized the Rep to sell this complex product without proper employee training. Another example would be sanctioning a Rep for recommending unsuitable products based on a flawed risk profiling tool provided by the dealer. Unrealistic Dealer imposed sales quotas can lead to Reps crossing the line. Too often, what at first glance look like Rep wrongdoing is actually rooted in deficient dealer management. It is like holding assembly line workers responsible for defective soldering when they are provided inadequate training, the wrong type of soldering iron and poor lighting conditions.

One key aim of regulatory and industry investigations should be to improve the performance of processes, to improve quality, to increase productivity, and simultaneously to bring pride to people. The aim of leadership is not merely to find and address individual failures and complaints, but to remove the causes of failure: to help people to do a better job for clients. Rather than seeing incidents as isolated (and often looking for the individual to blame for a bad result) a system view allows

managers to focus on the systemic drivers of results. This is why we continue to advocate for IIROC to adopt formal Root Cause Analysis in its investigations.

### **Early Resolution Offers**

Kenmar Associates have been constructively critical of IIROC enforcement intensity [in all of 2017, there were just **SEVEN** prosecutions involving Firms], Hearing Panel decisions, client complaint handling, dealer compliance monitoring/oversight, Complaint handling Rule 2500B, Board composition and lack of effective investor engagement. We therefore approach the ERO proposal with a critical eye.

According to the consultation "The Staff Policy Statement would promote resolving cases efficiently by encouraging settlement agreements at an earlier point in the enforcement process". Staff apparently believe these proposals will create operational and procedural efficiencies by promoting more timely resolution of certain cases which we assume would free up resources needed for larger and more complex cases. No evidence or research is provided to support the hoped for improvements.

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. Early Resolution Offers may be subject to negotiation between Staff and the respondent i.e. ERO offers could be further reduced beyond the 30% discount from what it would otherwise have been- respondents would have 30 calendar days to accept or reject the ERO but this might be extended under certain conditions. If an Early Resolution Offer is rejected or the time for acceptance expires, the matter would proceed through the normal enforcement process. The proposal says that Staff would *take into account* the terms previously offered pursuant to the Early Resolution Offer in any subsequent settlement negotiations or penalty Hearing. This needs an explanation.

IIROC state "Despite the implementation of these measures [Credit for cooperation/EMD], the settlement process has not been significantly impacted. While there are often valid reasons for delayed or protracted negotiation in certain circumstances, we believe there is an opportunity to achieve early resolution in more cases and that early resolution would benefit both parties involved, protect investors and deter future wrongdoing". What this is really saying is that in order to speed up a settlement, deeper concessions must be made to Member firms. But are speedier, smaller settlements really in the Public interest?

That being said, we do agree that taking good, sincere corporate behaviour into account, such as full investor compensation, should be a significant mitigating factor when determining the nature and size of sanctions. That is positive reinforcement. Conversely, a failure to fairly compensate victims should be treated

as an aggravating factor and met with an increased fine. Preemptively granting a significant fixed 30% reduction in the amount of fine sends a message that speed of settlement trumps the principles of credible deterrence.

In principle, credible deterrence can be achieved if a sanction strikes an appropriate balance between a Respondent's specific misconduct and the public's expectations as to an appropriate penalty to be imposed. Kenmar do not believe the prevailing low level of sanctions send the right message to Members. (see IOSCO Report *Credible Deterrence*

[https://www.iosco.org/library/annual\\_conferences/pdf/40/Stephen%20Glynn%20-%20Credible%20Deterrence%20report.pdf](https://www.iosco.org/library/annual_conferences/pdf/40/Stephen%20Glynn%20-%20Credible%20Deterrence%20report.pdf) . General deterrence can serve to

improve overall standards in the securities industry and increase investor protection. Will ERO really better protect investors in the long run? Will it maintain high standards of conduct in the securities industry and protect market integrity? We don't believe so. On the contrary, Kenmar believe that much tougher sanctions will help improve Member behaviour/culture because when the bottom line is impacted, Boards and shareholders pay attention. A firm hand will also lead to more respect for IIROC.

Back in 2013, IIROC argued that its proposed sanction guidelines would provide a more streamlined, principle-based approach to sanctioning, by eliminating the fine ranges and minimum fines that existed within its prevailing sanction guidelines. The revisions, it said, would ensure that the necessary factors are considered and sanctions appropriately reflect the gravity of violations. IIROC asserted that the removal of specific guidelines for itemized regulatory violations would address the mistaken notion that sanction decisions are formulaic and determined through the application of a check-list, and will reinforce the concept that appropriate sanctions are determined on a case-by-case basis. In principle, that would make it a more effective self-regulator. Further, in the last few years a number of provinces have given IIROC increased powers to be an effective self-regulator. We therefore question why ERO is needed.

What is needed is for IIROC to make fair decisions (as opposed to *negotiated*) based on existing sanction guidelines and face Members down as required. Our recommendation: If you aim to reduce violations (which is presumably the ultimate objective), make the sanctions and fines of a deterring nature.

Will such generous discounted fines act as potent specific or general deterrents to future wrongdoing? or will it have the opposite effect? We remain pessimistic given the lack of concrete evidence to the contrary.

In fact, we are not convinced that the original fine, based on a principles-based sanctions policy (which is being discounted by 30%) was severe enough in the first place. Accordingly, it is difficult for us to be strong supporters of ERO.

IIROC have listed 7 criteria in order to allow its members to fast track the disciplinary process. We would like to add 7 additional criteria for IIROC consideration that would have to be satisfied before ERO could be considered.

These are:

1. The dealer is not on IIROC's Risk Watch List
2. The Dealer does not (a) have a history of exploitive Complaint handling; (b) been Named and Shamed by OBSI or (c) low-balled an OBSI recommendation
3. The case does not involve fraud, gross negligence amounting to fraud or outright theft
4. The case does not involve document adulteration, forgery or signature falsification
5. The target victim(s) were not vulnerable investors/ seniors/ retirees
6. The case does not involve systemic malfeasance
7. The Rep or dealer is not currently under close supervision or third party monitoring

As far as the 7 criteria goes, we would expect any and all disgorgement cash to go to the victim(s), not to IIROC. It is our understanding that IIROC would not consider use of an ERO where there are client losses and full compensation has not been paid. As far as the applicability of internal dealer disciplining as a criterion we feel it is largely irrelevant with the possible exception of termination for cause. Internal Dealer "fines" are illegal under provincial Employment standards Acts and therefore should play no role in IIROC decision making.

No estimate is provided regarding the potential time savings and increased efficiencies of the proposals. If these are material, a cost- benefit analysis would have helped make the case. In addition, including a few illustrative examples to highlight the potential time savings and efficiencies of the proposals would have been helpful. More importantly, there is no discussion of the risks associated with these tools if IIROC beliefs prove to be incorrect.

One quantifiable downside of the discounted fines would be less money in the Restricted fund. Money from fines and settlements is contributed to IIROC's Restricted fund which can only be used for the benefit of investors .IIROC uses the fund to finance programs or systems to address emerging regulatory issues, projects relating to investor education, administration of disciplinary Panels and other uses authorized under IIROC's Recognition Orders.

### **Consideration of Other Alternatives to improve enforcement**

In lieu of MCP, IROC may wish to add a higher form of letter, a Warning letter, along the lines of the MFDA .Their definitions are:

"Warning letters are issued in circumstances where the violation is one that the MFDA could have escalated to a formal disciplinary hearing, but has chosen not to due to screening factors. Cautionary letters are issued when the violation is minor or less serious in nature and one that the MFDA would not generally escalate to a formal disciplinary hearing. While Cautionary Letters are disciplinary in nature, they are often issued for educational purposes."

This may satisfy the IIROC needs for an additional disciplinary tool. It would also provide for consistency between SRO's which is a good thing.

One way IIROC can increase fairness is via disgorgements. In 2017, just \$100K was disgorged from Dealers with ZERO in the 3 prior years. On the other hand, Individuals were sanctioned with disgorgements of \$779K, \$24K, \$331K and \$20K respectively for 2017 and 3 prior years. In 2018 not a single dollar was disgorged from Members but Reps were asked to give back \$133 K.[It is our understanding that IIROC retains disgorged cash in the Restricted fund—it does not return it to clients who were wronged. That is unfair].

Could it be that the transition to principles-based sanctions has had unintended consequences? In our firm opposition to this transition we argued that the lack of definite dollar ranges of fines for certain violations would result in an increase in negotiations with Members leading to increased cycle time and reduced sanctions. The advice industry is characterized by fierce defence against sanctions and complaints. It should come as no surprise that IIROC must endure extensive negotiations and concessions in order to reach a settlement [retail investors have long faced the adversarial nature of dealer complaint handling. According to an independent review of OBSI, it was found that 18% of cases where client compensation was recommended were low-balled or rejected outright. An investigation of dealer complaint handling practices would show considerable complainant abuse]. Without quantitative guidelines it is natural for Dealers to use the “flex” under principles-based sanctions to their advantage.

In our previous Comment letter we pointed out that FINRA, the U.S. counterpart for IIROC continues to use defined dollar sanctions [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf) It must be very difficult for enforcement Staff to negotiate with Members using principle-based sanctions in a rules-based regulatory regime. We urge the IIROC to reconsider its reliance solely on principles-based sanctions.

Perhaps enforcement process re-engineering is called for. Maybe increasing fines will decrease the case workload. Perhaps IIROC does not have the necessary human resources to support its mandate- in this case an increase in budget may be the preferred solution to more effective enforcement.

IIROC may want to consider the adoption of a Whistleblower program similar to the one in use by the OSC. It is our understanding that the program is very successful in improving enforcement. The more hard facts, the less need for extended negotiation.

### **Bottom Line**

Kenmar believe this consultation is a distraction from the real enforcement issues that surround IIROC.

The amount of money involved in these proposals is extremely small according to the 2017 Enforcement Report. In terms of penalties, IIROC ordered just \$3.4 million in total fines, costs, and disgorgement against individuals in 2017, which

was up slightly from 2016, when monetary sanctions totaled a meagre \$3.1 million. As for enforcement activity against dealers, IIROC ordered just more than \$1 million in total monetary sanctions, which was up from a minimal \$425,000 the previous year. With a 30% discount, on the \$830K in total fines levied, this would amount to about \$580K - chump change for the wealth management industry. Compare this to the nearly \$200 M p.a. that investors unduly paid IIROC regulated discount brokers in 2018 or the hundreds of millions of dollars IIROC dealers were compelled to pay investors due to an extended period of undetected overcharging. [As of April 30, 2019 there was not a single decision involving an IIROC Member in 2019]

Fairness and proportionality must be assessed not simply vis a vis the firm or Rep who is sanctioned but also vis a vis the investors or the integrity and fairness of the markets as a result of losses incurred or other harms that result from errors, misbehaviour and malfeasance.

The key issue is whether these additional enforcement tools will strengthen deterrence, improve business processes and increase confidence in our capital markets, and if so, whether the MCP and EROs are the appropriate tools to choose out of all of the possible options for an enforcement toolkit. Will these tools lead to a positive change in corporate culture? Given the information provided, we remain unconvinced that these programs will have a net positive impact for the retail investor.

IIROC states that both of these new programs would make its disciplinary measures "more fair and proportionate to the offenses," but the hard numerical fact is that after discounting, they will not be fair or proportionate at all. They will, after negotiation, be 30% less proportionate to the offences committed, making them also unfair. It is ironic that the IIROC sanction guidelines have been stripped of all numbers relating to the dispensing of fines but the one number that would prevail is the 30% related to a reduction of fines.

As stated in our general comments on IIROC enforcement, IIROC has vastly superior improvement opportunities for increasing investor confidence in the provision of personalized financial advice by its Members. That is where the priority should go. [According to the IIROC Investor Survey just 22% of participants would have increased confidence to invest through Canadian markets if the regulatory changes were made.]

IIROC is well aware that its Members have been instrumental in derailing every proposed regulatory reform over the past decade. From the retail investor perspective, these proposals for greater anonymity and bargain basement settlements are perceived as the last straw; an insult to the retail investor.

The fact that the IIROC Board has determined that the proposed Amendments are in the Public interest is troubling. This prompts us to once again request that the IIROC Board include in its Director skills matrix someone skilled at retail investor protection. We are of the firm conviction that this will help generate more investor

Kenmar Associates  
Investor Education and Protection

protection reforms and less proposals that degrade investor protection. Governance will improve.

In all conscience and fairness to retail investors, we cannot agree to these proposals as written. We do not feel a convincing case has been made for adoption of either of the two proposals.

Quite frankly, we are disappointed that IIROC is deploying scarce resources on a project to resolve enforcement cases faster when our expectation is that the focus should be dramatically increased enforcement as a result of all the scandals, retail investor abuse, growing seniors exploitation and IIROC Member initiatives to block needed regulatory reforms.

We agree to public posting of this Comment letter. Kenmar would appreciate prompt web posting so other commenters may see our perspective before they file their Comment letters.

Kenmar sincerely hope that IIROC will find the comments contained herein useful and constructive.

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

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