Kenmar Associates

Sent Via email June 13, 2022

Philippe Lebel Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514 864-8381
Email: consultation-en-cours@lautorite.qc.ca

The Secretary, Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
Email: comments@osc.gov.on.ca

British Columbia Securities Commission
Alberta Securities Commission Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

25-304 - Application for Recognition of New Self-Regulatory Organization [CSA Staff Notice and Request for Comment]
https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/2-certain-capital-market-participants/current/25-304/25304-csa-staff-notice-and-request-for-comment-may-12-2022

Kenmar welcome the opportunity to provide comments on New SRO modus operandi (CSA Notice 25-304). We acknowledge the significant effort the CSA team is investing to make New SRO a success. We will be submitting comments only on select aspects of the consultation.

Kenmar Associates is an Ontario-based privately-funded volunteer organization focused on investor advocacy (www.canadianfundwatch.com).Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, investors and/or their counsel in filing investor complaints and restitution claims.

The By-Laws and other elements of the proposal attempt to clarify and reinforce the fact that New SRO has a Public interest mandate.

The proposed governance structure of New SRO appears to be improved in that a "reasonable" proportion of the 15 Directors must have relevant experience regarding investor protection issues. We expect that about one third of the Board Directors would constitute "reasonable". The Board skills matrix or other governance document should provide guidance of what constitutes *relevant investor protection experience* –hopefully more detail will be revealed. The biggest potential weakness in the new governance approach will be the screening method used to select seasoned Directors with relevant investor protection experience. Some of the selected Directors should have Main Street creds.

The 3 year cooling off period requirement constituting independence should also capture individuals with law firms and accounting firms representing Members.

A few years ago, SIPA examined the SRO Board composition and found it did not provide for the investor voice even if the Directors were *independent* (which they were not perceived to be) See SIPA Report *Investor Protection and IIROC Governance* http://sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_InvestorProtection_IIROCGovernance_20161009.pdf "Independent" Directors that have material Bay Street ties/ serve on numerous corporate boards may not effectively represent the public and may face conflicts- of-interest. An individual who has spent their career in financial services may still embrace that culture regardless of the length of cooling off period. We'd like to see a pro-active effort to recruit more independent Directors with no prior relationship with the financial services industry. Many qualified retail investor-sensitive individuals exist in Canada – they should not be unduly denied access to New SRO Board simply because they have not worked in financial services.

We wish to stress that the Recognition Order (RO) must go beyond "protecting investors from unfair, improper, or fraudulent practices by its Members". There must be an obligation by New SRO on its Members to ensure that registered representatives (a) are provided the tools, processes, IT and support systems necessary to deliver professional financial advice ;(b) have the necessary education and training to competently and ethically advise on the services and products marketed and (c) are effectively supervised to ensure compliance with applicable laws, regulations, policies and rules.

While New SRO has a Public interest mandate it really can't be assessed without knowing what metrics will be used to measure the "public interest" impacts of new rules, or the metrics that will be applied to link executive compensation to the fulfillment of New SRO's public interest mandate. We recommend that more information be contained in the RO as regards the public interest obligation.

The proposed integrated investor protection fund (IPF) plan appears to be well designed and properly governed. The fund remains independent which is a positive. The Board members of the New IPF will comprise of existing directors of CIPF and

MFDA IPC which ensures continuity. All of the appointments are scheduled to take effect Jan.1, 2023, concurrent with the amalgamation of IIROC and the MFDA.

The $1M compensation cap has been in place for a long time and its value materially eroded due to inflation. At the same time, average account sizes have grown. We recommend that there be a periodic review of the cap to ensure it continues to fulfill its intended purpose.

We assume Quebec- only registered Dealers are required to be OBSI Participating Firms.

We expect the evaluation of Directed Commissions policy will consider the investor protection perspective.

Interim Rules

The New SRO intends to adopt and administer interim rules incorporating the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-laws, rules and policies of the MFDA (Interim Rules). The Interim Rules include.

- A proposal to permit mutual fund dealers to introduce business to investment dealers through an introducing/carrying broker arrangement, resulting in greater access to lower cost ETF for mutual fund clients is a positive (depending upon fees and commissions that will be imposed)
- An amendment to current IIROC proficiency requirements to permit Dealers with dual registration as both an investment dealer and a mutual fund dealer to employ mutual funds only licensed individuals. (no upgrade requirement) is OK as an interim step: longer term, individuals with product restrictions like selling a single product with an embedded sales commission shouldn't really be permitted to be titled "financial advisor". It remains to be seen how provincial titling laws will play out.

MEMORANDUM OF UNDERSTANDING REGARDING OVERSIGHT OF [{New SRO]

https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-2/25304-Draft-MOU-among-Recognizing-Regulators-regarding-oversight-of-the-New-SRO-May-12-2022.pdf [25 pages]

Statutory regulators have decided, after consultation and due consideration, to subcontract, via a RO, the regulation of some of their duties to a non-statutory regulator, [New SRO]. In order to ensure the subcontract is effective, the statutory regulators have established an Oversight Program. The purpose of the Oversight Program is to ensure that [New SRO] is acting in accordance with its public interest mandate, and complying with the terms and conditions of the [New SRO] Recognition Order. Implicit in this approach is the obligation to ensure that the RO is periodically reviewed and updated to reflect prevailing securities and other laws, that any gaps/deficiencies are promptly rectified and to identify action(s) that the statutory regulators must take to fulfill their own investor protection mandate.

It is our understanding that the Oversight program does not prevent New SRO from proposing policies, rules and procedures that exceed minimum regulatory requirements and/or the terms and conditions of the RO, if deemed to be in the Public interest and subject to Oversight Committee approval or non-objection.

In our view, the historical CSA oversight of the MFDA and IIROC has been deficient. Key issues that should have been flagged for affirmative action were left unattended. We need not repeat them here. The new Oversight Program covered by the MOU should be designed such that deficiencies in New SRO performance, structure or behaviour are identified for action in a timely, effective and public manner. Transparency is essential.

Like the previous oversight committee for the MFDA/IIROC, the scope of the New SRO review will be determined by utilizing a risk-based methodology established and agreed upon by staff of the RRs. We remain concerned with this approach because it failed to result in reporting serious and fundamental governance, compliance review, enforcement and ineffective rule issues (e.g. complaint handling). Investor protection issues were one of the factors leading to a New SRO with enhanced governance, structure, investor engagement and Public interest mandates. In our opinion, a risk-based approach may be necessary, but it is not a sufficient oversight model.

Kenmar recommend that the CSA oversight committee have a defined process to receive and use stakeholder (including New SRO IAP and investors) input in its New SRO oversight Program. Such grassroots information often points to deep underlying issues. A good example here would be the systematic harvesting of DIY investor accounts because IIROC did not take timely action to sanction Discount brokers charging for advice they did not and could not provide. The faster systemic issues are detected and resolved, the better for all stakeholders. **The requirement for this process should be delineated in the MOU.**

We also recommend that the New SRO Oversight committee liaise with OBSI when effecting its coordinated review work plan. OBSI has a real-time pulse on matters impacting the retail investor experience. Client complaints are a powerful indicator of systemic issues related to deficient rules (and enforcement of rules), poor complaint handling and Dealer supervision breakdowns.

We are not comfortable with the MOU in that the word "strive "is part of its formulation. **The New SRO is a creation of the CSA Members; there must be an unwavering commitment for the CSA to act as a unified entity in its oversight**. The New SRO's success depends on it being able to count on prompt, decisive and consistent CSA positions on key issues. Is it responsible regulation that each RR can, at any time, withdraw from the MOU with as little as 90 days' written notice to the Coordinators and to each RR? What are possible consequences? Oversight stability is, in our opinion, critical for successful New SRO functioning. From our perspective, this provision constitutes a potential failure mechanism for New SRO.

Per the proposed MOU, the Oversight Committee is to provide to the Chairs of the RRs an annual written report that will include a summary of all oversight activities conducted during the period and publish it. For greater clarity, we recommend that the MOU language state that the availability of the report be publicly disclosed via a News Release promptly after completion and posted on New SRO website.

RECOGNITION ORDER

(Section 24 of the Securities Act, RSBC 1996, c. 418
25304-Draft-Recognition-Order-for-New-SRO-May-12-2022.pdf (bcsc.bc.ca)

The New SRO Recognition Order should address the following:

1. **Governance 10**. RO criteria should contain language that would prevent the dominance of the Board by industry and ex-industry members. There should be say, a minimum of 5 Directors, that have had (a) no affiliation with the financial services industry and/or (b) have an established track record of supporting investor protection. As written, it would be possible for the entire New SRO Board to consist of 100% industry and ex-industry Directors, which would defeat the purpose of New SRO. Perhaps ex-industry Directors should have a cap, say, two. In our view the ideal composition would be that the independent Directors have unique skill sets such as empirical research, behavioural finance, economics, consumer advocacy , dispute resolution , RegTech, IT/cybersecurity, 6-Sigma/ root cause analysis , Plain language ,HR and socially responsible regulation.

Cooling off periods do not compensate for the lack of an authentic investor perspective. The Director skills matrix must include criteria that include demonstrated actions related to investor protection.

2. **Governance 10.** We recommend adding a requirement in the skills matrix that at least one New SRO Board Director have professional financial advice credentials /experience since the provision of personalized financial advice is a primary deliverable of the New SRO Members.

3. Replace **Rules** 10.1 (iv) with: The **establishment, maintenance and enforcement of professional competency, ethical and conduct standards for registrants authorized to provide personalized financial advice to investors.** There will be in excess of 100,000 persons providing such advice to Canadians within the New SRO. The suggested wording makes it clearer what the CSA expects of New SRO.

4. In those jurisdictions where insurance and investments are separately regulated, the chance for regulatory arbitrage is real, especially as regards Segregated funds. The Recognition Order should contain a provision encouraging New SRO to have an agreement with the applicable provincial insurance regulator(s) (and other regulators such as the FCAC) to share information on individuals and Firms in an attempt to reduce product and conduct arbitrage and improve fine collection. Many,

if not most, MFDA registered fund salespersons are dually-licensed as insurance agents.

Improved deterrence could be accomplished through automatic reciprocal enforcement of disciplinary orders between regulators. Regulatory fragmentation will cause far less trouble if all financial services regulators, including New SRO adopt each other's findings that a registrant is dishonest, unethical or ungovernable. The should be effective because an "advisor" tempted to stray from regulatory compliance in one financial sphere would know they'd have no ability to simply carry on business under an alternate licence. We believe such a regime will be at least as effective deterrence than imposing fines and trying to collect them.

An insurance regulator could, for instance, deny registration if an applicant has unpaid fines with another financial regulator. It would also add credibility to regulators and financial consumer protection. **The New SRO RO should include a provision requiring the New SRO to work collaboratively with insurance regulators on a "Best Efforts" basis.**

5. As regards **Appendix A Terms and Conditions**, Commission Oversight. The text reads : *"7.(1) [New SRO] must seek input from the Commission before finalizing its strategic and business plans, annual statements of priorities and budgets."* . Should there not be an obligation to use or at least **consider** Commission input? New SRO strategic plans and annual priorities must be consistent with, and supportive of CSA/Commission strategic plans and priorities, as applicable.

6. We recommend amending Schedule 1 Criteria for Recognition Rules *10. (1) [New SRO] must establish and maintain Rules that…* to Rules 10.(1) [New SRO] must establish, maintain **and apply Rules that** … One of the main shortcomings of the old regime was that it had plenty of rules but compliance oversight and enforcement were not at a level that adequately protected retail investors.

Schedule 1 (1) (b) (ix) New SRO must move *beyond "promoting the protection of investors*". Investors are not looking for promotion or cheerleading. Investors need and deserve meaningful protection of their savings related to the financial advice they receive and pay for. **We recommend changing this to: *protection of investors***

7. **We recommend that Schedule 1, 11. (c)**) imposing sanctions **be changed to …***imposing sanctions consistent with **IOSCO Credible Deterrence In The Enforcement Of Securities Regulation***
https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf The generic language used in the proposed RO is too general and provides no basis for accountability.

All CSA jurisdictions must take steps to ensure that New SRO has the legal right to collect on monetary sanctions imposed and to flow disgorgement cash received to harmed investors.

Disgorgement of ill-gotten gains should be an explicit sanction, distinctly separate from fines imposed. When disgorgement is applicable, it should apply to all unjust profits related to the infraction, not just those of the registered representative. As a general principle, Dealers should be held accountable for the actions and inactions of their representatives.

We wish to reiterate the point that investor restitution is a high priority for retail investors that have been harmed by Member wrongdoing. We expect New SRO to place an emphasis on making harmed clients whole as integral to its culture. New SRO sanction guidelines should prioritize investor restitution, considering such restitution as a powerful mitigating factor in assessing sanctions and the amount of monetary fines. Investor losses should be based on the opportunity-loss calculation methodology, consistent with OBSI's approach. The U.S. counterpart of New SRO, FINRA, has already done this as have IIROC to an extent. See FINRA *Supplements Prior Guidance on Credit for Extraordinary Cooperation* https://www.finra.org/rules-guidance/notices/19-23 Conversely, aggravating factors would include failure to cooperate, exploitation of seniors and vulnerable clients, fraudulent activity and refusal to accept accountability.

The new SRO has to play a bigger role in white collar crimes. When terms like "document changes without client approval", "signature falsification" and "misappropriation of assets" instead of fraud, forgery and theft are used it gives the impression to the public that regulators are unwilling or unable to deal with white collar criminals. The RO should contain a requirement for New SRO to refer ALL cases of illegal activity and suspected fraud to law enforcement. This will help dispel the public perception that self-regulators go easy on their Members.

8. We recommend amending Appendix A TERMS AND CONDITIONS 12. (1)(b) Investor engagement and protection "*establish a separate investor office within the [New SRO] to support Rule development and provide investor education or outreach. The investor office must be prominently positioned, easily identifiable and accessible to investors* "by changing "rule development "to "policy development" and "or" to *and* in the text.

9. The RO should require New SRO to allow Victim Impact Statements at Proceedings [APPENDIX A 17. (b)]

10 Schedule 1. **Add a requirement to establish a modern, effective Dealer client complaint handling system.** This is so important that we believe it should be explicitly and separately delineated in the RO under Schedule 1. We need not repeat all the deficiencies and low-ball settlements associated with existing SRO complaint handling rules and practices. These have been well articulated in our numerous reports on complaint handling. The client complaint handling system should be accessible, fair, expeditious and empathetic to retail investors .The complaint handling process must be based upon root cause analysis methodology in order to <u>eliminate</u> the root causes of wrongdoing/rule breaches and client dissatisfaction. We acknowledge that IIROC has taken initial steps in developing

such a system. Abusive complaint handling reflects poorly on the CSA and the industry, in addition to adding to investor grief and financial distress.

All material changes to complaint handling rules should be subject to public consultation and formal CSA approval.
NOTE: Kenmar urge the CSA to provide more detail and a much higher level explanation of core principles and standards that they expect of the new SRO/industry as regards complaint handling. See for example, ASIC RG 271 Internal Dispute Resolution (57 pages).
https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf
The New SRO deserves this as a foundation to design its Dealer complaint handling process. The provisions of NI31-103 are wholly inadequate as a baseline.

11. The OBSI interface: **The development of an effective working relationship with OBSI with the goal of improving rules, processes and products and preventing recurrence of harmful systemic issues should be added to SCHEDULE 1 CRITERIA FOR RECOGNITION 12. (2) or listed separately.** This provision will be extremely important when OBSI is provided mandates for binding decisions and systemic issue investigation. It is essential that the loss calculation methodology (making complainants whole) used by OBSI and New SRO are congruent. We're not sure what role New SRO will play in nominating OBSI Directors or as members on the OBSI JRC. In our opinion, New SRO should not have the duty to nominate OBSI Directors , Directors should not represent entities or groups. Director selection should be based on a skills matrix , a governance best practice. If New SRO remains on the JRC, it should be as an equal partner. These issues should be clarified as soon as possible.

12. Appendix A 12 (d) Maintain a whistleblower program. Should the RO not specify that the program must protect the privacy of individuals? Must the program contain financial awards for whistleblowers? Can registrants utilize the OSC program? More specificity is required.

13. The Recognition Order should require New SRO to have in place qualitative and quantitative performance benchmarks that can be used to assess performance. For example, there could be metrics related to cycle time reduction, investor complaint frequency/trends, recurrence controls, monetary sanction collection and the results of a mandatory scheduled investor satisfaction survey. As former GE CEO Jack Welch used to say *"What gets measured gets done".*

We suggest that the RO require New SRO to conduct an annual or bi-annual investor satisfaction survey as it will provide New SRO management (and indirectly the CSA) with valuable insights on how the public perceives the New SRO.

14. The RO should define the minimum frequency of independent third-party reviews [APPENDIX A 7. (2)]. The report of the independent third-party review should be made public for transparency.

New SRO Investor Advisory Panel

|https://mfda.ca/new-iap-faq/ Schedule 3

Generally speaking, the proposed IAP mandate appears to be adequate in order for it to become a meaningful voice for Main Street. The IAP is independent and able to examine any matters within its mandate that its members collectively wish to study. Upon reasonable request, the IAP should be briefed about those matters from New SRO staff/executives. For greater clarity, OBSI issues should be considered as relevant to the mandate of the IAP.

The composition of the IAP includes *representation from across Canada.* Geography is rarely a factor in investor protection. Panel member demographics, on the other hand, often are. These include but are not limited to seniors, indigenous peoples, the handicapped, people of colour, language and the like. An undue emphasis on geographic locale could unduly limit the composition and capability of the IAP.

Panel size: **We recommend a minimum size of seven members rather than five (a quorum would constitute at least 4 members).**

The IAP must be appropriately resourced to be effective. It should have an adequate budget including funding for investor research projects/polling. With respect to "*The IAP may engage in independent research projects as needed to assist the New SRO in the fulfillment of its public interest mandate*. " we suggest adding that the funding of such research will be via New SRO. All research reports shall be publicly posted in the section of New SRO website dedicated to the IAP.

We recommend that New SRO Board must meet with the IAP Chair at least semi-annually. This interaction is vitally important to bring the investor experience into the Board room, especially in the first few years of New SRO.

The liaison between the IAP and the Investor Office makes sense. Resources should be provided by the Office that include the recording of IAP meting minutes and other administrative tasks such as the scheduling of meetings and web-posting.

It should be expected that New SRO IAP will communicate with the CSA IAP and the OSC IAP. New SRO should dedicate a section of its website to the IAP for publication of meeting agendas, research, comment letters and the Annual Report.

The honorarium provided to IAP Members should be commensurate with the level of effort expected and sufficient to attract high caliber participants. Expenses incurred to attend meetings should be reimbursed.

We recommend that the draft IAP text be amended to expand on the above mentioned points.

Other ideas for CSA consideration

Titles/ credentialing

The Title Protection Act passed by the Ontario government could add to investor confusion, at least in Ontario .In effect, a new SRO is being created in that Credentialing Bodies (CB) will be recognized by a statutory regulator, the FSRA. These bodies will be setting rules, Codes of conduct and minimum standards, conferring FP and FA title usage to build financial consumer trust. They are also required to have an enforcement arm. There will be multiple CB's all with slightly different approaches. If the chosen standards conflict with New SRO rules or are of a lesser standard, this could cause confusion for retail investors who will trust Reps with the FA or FP title (designation). Will New SRO apply to be approved as a FSRA (or other applicable provincial regulator) FA CB? This need not be decided right now but it should be part of Year 1 planning.

We note that the CSA CFR's provide robust rules regarding misleading titles and designations for securities industry registrants.**In any event , the CSA ought to attempt to harmonize the efforts of the provinces regarding the FA title to prevent investor confusion** .A central national database of approved FA and FP title holders is likely necessary as well.

Complaint brochure and related
Because client complaints are a major emotional and high profile client touch point, we recommend that an integrated New SRO complaints brochure be available for clients on Day One. The last thing New SRO and the CSA needs at the outset is a lot of confused complainants unclear about the way to resolve their complaints. Ideally, a consultation on a new modern complaints handling rule could be released in early 2023 for implementation by summer 2023.Hopefully by then, the fate of OBSI's mandate will have been decided. If Finance grant OBSI banking ECB exclusivity, workload at OBSI will be challenging. Overall, the Dealer client complaint process must be well planned and defined upon New SRO launch to prevent investor confusion. [the substantive feedback obtained from the IIROC consultation, Proposed *Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements* can form the basis for the new rule]

Continuous improvement commitment
We strongly recommend that the RO contain a discrete provision for continuous improvement of regulatory effectiveness, efficiency and cycle times (productivity).

Non-permitted activities
Kenmar strongly recommend retaining the existing MFDA rules prohibiting dealing Reps from acting as executors or trustees (except immediate family members). The CSA RO (or other means) should make it clear that an SRO has the right to prohibit such activities by its Members (despite the CSA CFR's permitting this relationship).

Regulation of Robo-advisors for mass market retail clients
It is our understanding that so-called Robo- advisors are regulated by statutory regulators and by IIROC. Given advances in technology and constraints on access to full-service Firms, we expect there will be high retail investor demand for lower

cost digital advice. As we understand the situation ,the difference between the IIROC and Securities Commission regulation relates largely to the level of supervisory touch, frequency of inspections and governance by explicit rules (IIROC) vs high level principles (statutory CSA Commissions).The client base is common-DIY investors. Kenmar believe that it would be wise to locate the regulation of Robos under a single entity to ensure consistency of regulation of this important retail advisory channel. A single regulator would also help reduce investor confusion and provide investor protection fund coverage. **Accordingly, we recommend that all robo-advisors should fall under the New SRO mandate subject to a CSA National Instrument governing digital advice and robust CSA oversight as deemed necessary.**

IIROC arbitration program

This little used program merits a full rethink and update including its governance, regulation, oversight, transparency and utility. As it stands, administrative and arbitrator fees are usually divided equally between the investor and the IIROC Member Firm. The New SRO should consider different measures that could allow for a subsidization of complainant fees related to arbitration through the use of collected fines (restricted funds). An alternative option might be to increase the OBSI compensation cap to $500K and eliminate arbitration. If arbitration is retained, it should apply to all New SRO Member Firms and be formally highlighted in the RO.

Use of Guidance Notices

Regulatory guidance is given to clarify or resolve an issue or confusion based on an existing set of rules and laws. Guidance is not a replacement of those rules or laws. A guidance notice is the place to help support the industry in clarifying information not to re-write the rule book. Example: In the OEO consultation, IIROC introduced a new regulatory definition ("recommendation"), and supervisory requirement (appropriateness). In effect, IIROC used the guidance process in replacement of a rule making one. **Kenmar recommend that New SRO RO require discussion of proposed guidance with the CSA Oversight team to ensure appropriate use of Guidance.**

SRO Regulatory exemptions

Rules and regulations are developed after deep thought and an extensive public consultation process. When these rules and regulations are approved, investors expect them to be followed .What most retail investors do not know is that in the investment industry, mechanisms exist to exempt Firms and individuals from the published rules. In our view, when a published standard/rule can be exempted without public consultation, there are in effect no rules. Exemptions to rules are overwhelmingly in favour of industry participants. Should the CSA permit New SRO to grant exemptions to rules it may have previously approved? We urge the CSA to clarify its policy regarding what rights New SRO would have in granting exemptions to rules and how they are granted. We appreciate that New SRO must provide a summary of all discretionary exemptions granted to individuals, Dealer Members, and marketplace participants during the previous quarter

Conclusion

The foundation of a dramatically improved SRO appear to have been laid. Kenmar stand ready to support the healthy development of this new regulator. As with any undertaking of this complexity, there will be mis-steps. The key to success is to quickly resolve issues in real time and listen to the voice of the retail investor.

Kenmar will use the following indicators to assess the effectiveness of New SRO:

- Board governance that places, and is perceived to place, investor protection and the Public interest as top priorities
- High professional standards for advice givers
- Enforcement culture and activity is focussed on corrective action/ improvement , not just deterrence - *Don't just fix the problem, fix the process*
- Enhanced enforcement and transparency on Member Firms / increased accountability of Member Firms
- Improved retail investor engagement
- Expanded protection of seniors and vulnerable clients
- Implementation of a world class Dealer complaint handling rule
- An increased emphasis on investor restitution including disgorgement
- An improved KYC system (including enhanced client risk profiling)
- Sanctions and fines designed to provide credible deterrence , resolve systemic issues/root causes and provide restitution to harmed investors
- A demonstrably serious approach re addressing investment fraud, forgery and theft.

Investors should be kept well informed of the regulatory changes taking place and how the changes will affect their relationship with New SRO dealers.

CSA Registration check should continue to reliably function without interruption as it is an important investor protection tool.

Permission is granted for public posting of this Comment letter.

We sincerely hope this feedback proves useful to CSA policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates