

December 7, 2021

The CSA Secretariat C.P.400,  
Place Victoria 800, rue du Square-Victoria, suite 2002  
Montréal, QC, H4Z 1J2  
Tel.: 514-864-9510 Fax: 514-864-9512  
E-mail: [csa-acvm-secretariat@acvm-csa.ca](mailto:csa-acvm-secretariat@acvm-csa.ca)

British Columbia Securities Commission  
Alberta Securities Commission –  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince  
Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon  
Superintendent of Securities, Nunavut.

**CSA Staff Notice and Request for Comment 11-343, Proposal to Establish a  
CSA Investor Advisory Panel**

[https://www.securities-administrators.ca/wp-content/uploads/2021/12/CSA\\_IAP\\_Notice\\_E.pdf](https://www.securities-administrators.ca/wp-content/uploads/2021/12/CSA_IAP_Notice_E.pdf)

Kenmar want to formally express our respect for CSA leadership and vision in establishing an Investor Advisory panel (IAP).

Kenmar appreciate the opportunity to comment on the proposed CSA retail investor IAP. An independent IAP is critically important for millions of Canadians saving for their retirement, their children's education, the purchase of a home or other important life goals. An IAP provides the CSA a vehicle to comply with the G20 HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION. Effective investor involvement improves the democratic accountability of the CSA and builds trust and confidence in the CSA.

Kenmar Associates is an Ontario-based privately-funded advocacy organization focused on investor protection and investor education via on-line articles 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 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.

**Our comments**

## Kenmar Associates

The key to effective investor- regulatory involvement is knowledge on the part of both investors and regulators. Retail investors have to know about the regulatory regime if they are to be able to be effectively involved in it. Regulators have to have knowledge about retail investors' knowledge, behaviour and needs if they are to design regulation which provides them with appropriate protections.

This renewed policy and regulatory focus on retail investor protection results inter alia from the increased transfer of opportunities and risks to individuals and households in various segments of financial services, as well as the increased complexity of financial products and rapid technological change. Rapid financial market development and innovation, unregulated or inadequately regulated and/or supervised financial services providers, and misaligned incentives for financial services providers increases the risk that retail investors face abuse, misconduct and fraud. In particular, low-income and less experienced consumers often face particular challenges in the market place. A CSA IAP provides a voice for Main Street to address these challenges.

Corporate Canada and the financial services industry have the power and resources to effectively and continuously lobby government and CSA decision makers. The Canadian retail investor has extremely limited capabilities to access decision makers or lobby for necessary policy and procedural reforms. An IAP provides a vehicle to rebalance the huge gap in access to the CSA. An IAP is in fact a fundamental component of socially responsible regulation and should be considered a fundamental investor right. The existence of an IAP is in the Public interest.

**Mandate:** There are two main components. The first is to respond to requests for advice/ comments from New SRO. The Panel will also advise New SRO with respect of its annual priorities and strategic plans. The second is for the Panel to raise current and emerging investor issues to the CSA for consideration/ action. The Panel may speak out publicly when it wishes to draw attention to matters in the Public interest.

The Terms of Reference should include a mandate to advise and challenge the CSA from the earliest stages of its policy development to ensure it takes into account the investor viewpoint. The Panel should be able to speak freely and forthrightly.

The Panel is expected to respond to CSA policy/consultation requests and other consultations deemed crucial to investor protection. For clarity, these other consultations will include those of other CSA member Commissions, New SRO and OBSI. The IAP shall consult with the CSA when planning to comment on a consultation other than a direct CSA originated consultation.

The Panel is expected to develop its own work plan and choose which topics and priorities to address, in addition to responding to CSA requests for advice and comment. The Panel should commission such research as it considers necessary in order to help it to fulfil its duties under the Terms of reference.

**Composition:** We recommend that the IAP consist of seven to nine Members to provide the necessary competencies, perspectives and geographic coverage. The composition of the Panel membership should reflect and promote a diversity of perspectives (such as geographic diversity-including rural perspectives, age demographics, underrepresented investor perspectives and investors from historically marginalized communities), expertise and experience. A Panel size of five is too small to be effective and could be inoperative if one Member is unable to attend. For coordination purposes, a reserved position for an OSC IAP member shall be maintained provided such person meets CSA IAP participation requirements. A Member of the Autorité des marchés financiers ("AMF") Financial Products and Services Consumer Advisory Committee and the New SRO IAP (yet to be formed) should each have Observer status on the Panel to prevent duplication of effort and provide liaison.

**Recruitment:** Members should be recruited via a public solicitation.

**Timing:** Completion of the Member selection process in the Spring of 2022 is reasonable.

**Independence:** The Panel itself will determine which issues and priorities to comment on. In addition to responding to CSA requests for advice and comment, the Panel will select issues that are believed to have significant retail investor impact and will be expected to provide objective and unbiased opinions on these issues. The Panel will conduct its deliberations without involvement from the CSA. It will also consult widely with retail investors as determined by the Panel Chair.

### **IAP Member credentials:**

Members should have a broad skill set which could include financial consumer advocacy, behavioural finance, financial planning, law and academia

There must be credibility amongst investor advocate stakeholders - including:

- (a) A track record for advocating for fairness in investor protection for Canadians
- (b) Ability to work collaboratively with other investor protection groups, seniors Associations, Public Guardians etc.
- (c) Basic knowledge of the Canadian financial sector and retail services/products
- (d) General knowledge of applicable Canadian securities law and regulation
- (e) An understanding of current retail investor issues

**Panel Chairperson duties.** The Panel Chairperson responsibilities will include: (a) Leading IAP activities and discussions; (b) Preparing meeting agendas; (c) Chairing Panel meetings and (d) Act as the Panel's spokesperson and liaison with the CSA.

**Meeting times:** The time and duration of meetings shall be structured to accommodate Members residing in different Canadian time zones.

## Kenmar Associates

**Service Terms:** The CSA Chairs will appoint Members for staggered terms of up to 3-years. The terms are one-time renewable.

**Meeting schedule:** A minimum of four meetings per year with the CSA is appropriate with additional meetings scheduled as deemed necessary.

**Compensation:** The proposed remuneration appears to be in the ball park, albeit on the low side. All applicable transportation, food and accommodations expenses incurred should be reimbursed.

**Confidentiality:** IAP Members must maintain the confidentiality of non-public information provided to the Panel including documents provided or the content or existence of any discussions held between them or the CSA, unless specific consent is provided by IIROC

**Budget:** Subject to the CSA approval, the IAP will be provided with an annual budget for activities such as consultations, research, surveys, outreach or preparation of submissions, to facilitate its ability to carry out its mandate.

**CSA technical support:** The CSA will provide reasonable access to CSA Member subject matter experts as may be required for the IAP to competently perform its mandate.

**CSA admin support:** New SRO shall provide the necessary administrative support to enable the Panel to operate effectively and efficiently. The administrative support would include notifying Panel Members of dates/times when meetings are to be held and to take charge of recording minutes of the meetings and distributing them.

**Web presence:** A section of the CSA website should be dedicated to the Panel and an email address provided for contacting the Panel Chair.

**Transparency:** The IAP should publish meeting agendas and minutes (redacted as necessary) on a dedicated section of the CSA website. The IAP should be required to publish an Annual report on its activities and viewpoints to be disclosed on its section of the CSA website. All Comment letters prepared by the Panel shall be publicly posted on appropriate websites.

**Termination of the IAP:** The possibility of an abrupt cancellation of an IAP sends a very bad message. When the OSC suddenly failed to renew the IAC mandate a decade or so ago, the distrust of the OSC soared. This is not a provision a modern securities regulator wants to include in the IAP mandate document. We strongly urge the CSA to delete the provision. Rescinding an IAP mandate would be unconscionable. It is so unlikely that the CSA would want to terminate an IAP, there is no need for this provision. If the CSA must have an exit clause, we recommend that at least 6 months' notice be provided based on a unanimous decision of all provincial and territorial jurisdictions. Our recommendation is the opposite- embed

## Kenmar Associates

the IAP into CSA culture and Terms of Reference.

**Independent work:** Confidentiality requirements and potential conflicts-of-interest provisions of an IAP Member should not prevent such individuals from independently advocating and writing on a number of key investor protection issues nor acting as Intervenors/Counsel involving CSA enforcement cases. In these situations, the Member shall not be permitted to utilize any non-public information provided to him/her as a result of her/his IAP membership.

We sincerely hope you find this feedback useful.

Do not hesitate to contact us if there are any questions.

Permission is granted for public posting of this Comment letter.

Ken Kivenko, President  
Kenmar Associates