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May 23, 2017

Robert Day
Senior Specialist Business Planning
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Sent via email to: rday@osc.gov.on.ca

Dear Mr. Day,

**Re: Ontario Securities Commission
Draft Statement of Priorities for 2017-2018**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Ontario Securities Commission ("OSC") in regards to its draft statement of priorities for 2017-2018 (the "SOP").

About Advocis

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 13,000 members, organized in 40 chapters across the country, are licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to a professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain professional liability insurance, and put their clients' interests first. Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

Comments on 2017-2018 OSC Priorities

Advocis continues to support the OSC's mandate of protecting investors from unfair, improper or fraudulent practices and of fostering fair and efficient capital markets and confidence in those markets. We believe that this mandate must be exercised through the promulgation and enforcement of fair and effective regulations that represent all market participants, including financial advisors and planners. Otherwise, these regulations could become overly burdensome, and even restrictive, impacting the goals that the OSC is trying to achieve.

An increasing aging population and the emergence of a generation of tech-savvy millennials are influencing product development, including the rise of robo-advice. While we support innovation, we believe that regulators should not view new developments such as robo-advice as a panacea. The advancement in product development should be driven by consumer choice and continued access to financial advice. Robo-advice should not be considered as a replacement to existing advice channels, but as a way to complement their evolution.

In the past year we have seen a number of policy initiatives that have originated from the CSA and Ontario which aim to protect consumers and reduce conflicts of interest, including the proposed reforms to define a best interest standard, the option of discontinuing embedded commissions, and new approaches to regulating financial advisory and planning services. The outcome of these initiatives have the potential of fundamentally changing the advisor/client relationship, resulting in serious unintended consequences to the consumer and the industry as a whole.

Prior to turning to the specific initiatives identified in the SOP we would like to highlight key takeaways for the OSC to think about and discuss with the Minister of Finance as we feel they are critical if the industry, the OSC, and the government hope to move forward in a positive manner:

We are troubled that the OSC is prepared to work with an evolving subset within the broader financial sector (fintech to be crystal clear), to the point of including them in the development of the regulations that will govern their actions and encourage their development, yet has continually dismissed financial advisors' and planners' requests to be involved in their own regulation. Consequently, Advocis recommends that the OSC extend the same eye to including fintech in the development of regulations that will govern this emerging subsector to financial advisors and planners. Absent properly regulating the existing channels and recognizing that the form of regulation must change – even to the point of self-regulation – the OSC risks supporting one part of the sector over another with serious negative consequences for the industry, consumers and the government.

Deliver Strong Investor Protection

We applaud the OSC for its commitment to investor protection. However, we agree with the Honourable Joe Oliver, former federal minister of finance and former executive director of the OSC, that although among the regulator's primary responsibilities is to ensure investor

protection, an emphasis of this responsibility ultimately has led to a disproportionate increase in regulation.¹

Advocis is concerned that the OSC is prepared to carry out major policy reforms that will increase regulation to try to resolve problems based on the questionable behaviour of some advisors that have tainted the whole financial advice industry. While well-intentioned, these regulatory reforms have the potential of negatively impacting the entire market, including consumers, who will be deprived from access to financial advice when they need it the most. We continue to believe that the best way to address advisor behaviour concerns can be resolved by increasing professional standards and introducing a best interest duty of care that is implemented and interpreted by the financial advice profession.

Best Interest Duty (BID)

We are pleased that the OSC recognizes the importance of the advisor/client relationship and the role that financial advisors play in the investor experience. Many of the targeted reforms that securities regulators are currently proposing show that the OSC and the rest of the members of the CSA are looking to enhance advisor proficiency and professionalism. But to improve proficiency and professionalism one must reform the regulatory framework from a system that still views financial advisors as salespersons to a system that is inclusive and representative.

Advocis supports a BID for financial advisors and planners that is interpreted and implemented by the financial advice profession. We believe that the creation of a regulatory BID by provincial securities regulators is not the right approach. A regulator-imposed BID would be unfair and unworkable, because regulators are far detached from the day-to-day practice of financial advisors. Given this detachment, it is our position that provincial securities regulators do not understand the work that advisors do and therefore should not be in a position to enforce a “best interest” principle to an advisor’s daily practice. Under a regulator-imposed BID, advisors and planners would be forced to comply with a standard that is being interpreted and imposed by a regulator that has failed to represent them and involve them in their own regulation.

Advocis members have adhered to a BID through its Code of Professional Conduct for several years. In addition, most jurisdictions such as the Autorité des marchés financiers, the Alberta Securities Commission, the Manitoba Securities Commission and the BC Securities Commission acknowledge that there is no need to introduce a regulatory BID as “In their view, in the current regulatory and business environment, implementing the targeted reforms to deal with specific harms identified will meaningfully and practically lead to better investor outcomes and advance the best interest of all investors.”² Advocis will continue to work with the OSC and the other jurisdictions still considering a BID, and will continue its efforts toward greater recognition of a BID that is interpreted and implemented by financial advisors and planners.

¹ Oliver, Joe. *Joe Oliver: Banning embedded mutual fund fees will only hurt the investors we should be helping*. Financial Post. April 17, 2017. At: <http://business.financialpost.com/fp-comment/joe-oliver-banning-embedded-mutual-fund-fees-will-only-hurt-the-investors-we-should-be-helping>

² CSA Staff Notice 33-319 *Status Report on CSA Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*. May 11, 2017. At: http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20170511_33-319_proposals-enhance-obligations-advisers.pdf

Embedded Commissions

With financial literacy at an all-time low, it is crucial that consumers continue to have access to financial advice. More so if people make decisions based on insufficient financial expertise and uncertainty, as pointed out by the OSC's recent Staff Notice on behavioural insights.³ Investors with lower financial knowledge and assets depend on the embedded compensation model option to access financial advice. Banning embedded compensation would remove this choice and would most likely reduce access to advice, as the majority of investors would not be able to afford a direct fee.

The embedded compensation model should remain an option in how consumers access and pay for financial advice. Banning embedded compensation will limit choice and will undermine the ability of consumers, especially those with lower incomes, to access professional financial advice when it is needed the most. This has proven to be true in jurisdictions such as the UK, where after the implementation of the Retail Distribution Review (RDR) consumers have had less access to financial advice as the majority can no longer afford to pay a direct fee.

RDR has reduced access to financial advice and has driven down financial advisor numbers, increasing the cost of advice. According to the Financial Conduct Authority's (FCA) Post-implementation review of the retail distribution review – Phase One "...there is evidence that the cost of advice has increased."⁴ In December 2016, both Thisismoney.co.uk and FTAdviser reported on this increase. Thisismoney.co.uk reported a hike in advice fees of 50 per cent in four years, and FTAdviser reported that adviser charges had steadily increased in recent years. More recently, in March of 2017, FTAdviser reported that clients are paying their advisors up to two and a half times more since 2012.

Thisismoney.co.uk reported that when advisers started charging fees "most started charging clients 0.5 per cent of their total investment as an annual advice fee... However, research from Schroders Adviser Survey has found [that] more than four in 10 advisers now charge clients 0.75 per cent of their assets – a hike of 50 per cent in just four years."⁵ Similarly, FTAdviser reported that according to Harrison Spence research "adviser charges have steadily increased in recent years with a 1 per cent charge now being the norm."⁶ Independent financial advice firm Candid Financial Advice suggests that some clients may even be paying up to two and a half times more for advice since commissions were banned. Prior to RDR the commission paid to advisors was about 0.5 per cent; after the ban advisors started charging a fee of around 1 per cent. But since the investment growth of a typical portfolio may have increased by 25 per cent since 2013, investors could be paying two and a half times more a year compared to the pre-RDR regime.⁷

³ OSC Investor Office Behavioural Insights Report. *Behavioural Insights Key Concepts, Applications and Regulatory Considerations*. March 29, 2017. At: http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20170329_11-778_behavioural-insights.pdf

⁴ FCA Post-implementation review of the retail distribution review – Phase 1. December 2014. At: <https://www.fca.org.uk/publication/research/post-implementation-review-rdr-phase-1.pdf>

⁵ Lawrie, Eleanor. *Financial advisers hike investment fees 50% in four years and even admit dumping clients with less cash*. At: <http://www.thisismoney.co.uk/money/investing/article-4024484/Financial-advisers-hike-investment-fees-50.html>

⁶ Fantato, Damian. *Financial advisers charge 1% in 2016*. FTAdviser. December 15, 2016. At: <https://www.ftadviser.com/your-industry/2016/12/15/financial-advisers-charge-1-in-2016/>

⁷ Faurshou, Julia. *Advisers accused of overcharging post RDR*. FTAdviser. March 16, 2017. At: <https://www.ftadviser.com/investments/2017/03/16/advisers-accused-of-overcharging-post-rdr/>

Patrick Ring⁸ also indicates that the RDR has increased the cost of advice. Further, he says that “There is evidence that the reforms have taken the cost of advice out of the reach of many consumers; more properly put, it has either put off many consumers from taking advice or made them unprofitable for financial advisers.” The increase in fees has also resulted in advisors having to drop clients because they do not have enough assets to invest. In 2014, for example, a person with less than £25,000 in assets was considered to be the cut-off point, while in 2016, the amount increased to clients with assets under £100,000.⁹

On April 25, Investment Executive published an article on the impact of MFDA licensed advisors on the Canadian mass market.¹⁰ The MFDA is exploring the client segment that would be most affected by the potential elimination of embedded commissions. According to the preliminary findings, MFDA licensed financial advisors represent close to nine million Canadian households (56 per cent of all households); specifically, of the households that deal with MFDA licensed advisors, 80 per cent have less than \$100,000 in assets to invest. If embedded compensation were to be banned in Canada we could be facing the same unintended consequences as in the UK. Banning embedded compensation will impact the mass market by eliminating choice and limiting access to financial advice.

On May 4, 2017, the second part of a new CRM2 research study commissioned by the BC Securities Commission to examine investor investment attitudes and behaviours was released. The top findings show that¹¹:

1. A majority of the investors surveyed found value in the new fee reports; 62 per cent thought the reports were easy to understand and 67 per cent thought the reports provided the information required to understand the fees associated with their investments.
2. Investors were more knowledgeable about their fees after reading the new CRM reports; 76 per cent and 59 per cent compared to 67 per cent and 48 per cent in the first survey.
3. Investors trust their advisors as much now as they used to prior to receiving the new CRM2 reports.

Based on the findings of the BC Securities Commission study, we believe that any regulatory concerns normally associated with the embedded compensation model, such as conflicts of interest, can be effectively addressed by improving transparency and disclosure through CRM2. Prior to moving ahead with new reforms, the OSC should wait and evaluate the effectiveness of CRM2 before considering banning embedded compensation. Because of the negative repercussions that banning the embedded compensation model could bring onto the financial advice industry in Ontario and in Canada, we urge the OSC to allow the CRM2 reforms to be fully

⁸ Patrick Ring (2016) “The retail distribution review: Retail financial services; regulation; financial advice market review”, *Journal of Financial Regulation and Compliance*, Vol. 24 Issue: 2, pp. 140-153, doi: 10.1108/JFRC-08-2015-0044

Permanent link to this document: <http://dx.doi.org/10.1108/JFRC-08-2015-0044>

⁹ Lawrie, Eleanor. *Financial advisers hike investment fees 50% in four years and even admit dumping clients with less cash*. At: <http://www.thisismoney.co.uk/money/investing/article-4024484/Financial-advisers-hike-investment-fees-50.html>

¹⁰ Paez, Beatrice. *MFDA-licensed advisors have firm grip on Canada’s mass market*. Investment Executive. April 25, 2017. At: <http://www.investmentexecutive.com/-/mfda-licensed-advisors-have-firm-grip-on-canada-s-mass-market>

¹¹ New Research Findings from the BCSC. May 4, 2017. At: <https://www.investright.org/investor-news/new-research-findings-from-the-bcsc/>

implemented and evaluated, and outcomes analyzed. Otherwise, banning embedded compensation outright could lead to greater harms that outweigh any benefits brought about by this proposal.

Deliver Responsive Regulation

Fintech

The OSC has aptly identified the fintech sector as an opportunity for growth. When the OSC launched the OSC LaunchPad, it announced that the LaunchPad “will provide direct support to eligible new and early-stage fintech businesses that provide innovative services, products and applications of benefit to investors. The support will be tailored to each business, allowing for meetings with the OSC LaunchPad team on navigating the regulatory framework, flexibility around current regulatory obligations, or informal guidance at an early stage on potential securities regulation implications.”¹² ***We are troubled that the OSC is prepared to work with an evolving subset within the broader financial sector, to the point of including them in the development of the regulations that will govern their actions and encourage their development, yet has continually dismissed financial advisors’ and planners’ requests to be involved in their own regulation.***

Developments in the fintech industry, including robo-advice, can assist financial advisors in providing better service to their clients, but cannot replace the role of holistic financial advice. It is critical that regulators not only look to new innovations in the fintech sector, but look to the evolution that is taking place within the established financial advice channels. ***The same eye to including fintech in the development of regulations that will govern this emerging subsector must also be extended to financial advisors and planners. Absent properly regulating the existing channels and recognizing that the form of regulation must change – even to the point of self-regulation – the OSC risks supporting one part of the sector over another with serious negative consequences for the industry and consumers.***

Reduce the Regulatory Burden

The OSC is leading policy initiatives such as the implementation of a regulatory BID and ban embedded compensation to protect investors from conflicts of interest. These initiatives will add regulation and will not solve the problem. The Honourable Joe Oliver expressed that “excessive regulation undermines efficiency, impairs competitiveness, and can have unintended and perverse results.”¹³ Advocis believes that the best way to reduce the regulatory burden is to professionalize the financial advice industry. A financial advice profession would ensure that financial advisors and planners adhere to a code of conduct that includes a best interest duty of care that will put clients’ interest first and will follow strict suitability and transparency rules.

¹² “Regulator Unveils OSC LaunchPad, a First in Canada”. Ontario Securities Commission News Release. Ontario 24, 2016. At: http://www.osc.gov.on.ca/en/NewsEvents_nr_20161024_regulator-unveils-osc-launchpad.htm

¹³ Oliver, Joe. *Joe Oliver: Banning embedded mutual fund fees will only hurt the investors we should be helping*. Financial Post. April 17, 2017. At: <http://business.financialpost.com/tp-comment/joe-oliver-banning-embedded-mutual-fund-fees-will-only-hurt-the-investors-we-should-be-helping>

Advocis looks forward to working with the OSC as it works towards the objectives identified in the SOP for the coming year and beyond. We would be pleased to address any concerns or questions that you may have; please contact the undersigned or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a long horizontal line that tapers to the right.

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

A handwritten signature in black ink, appearing to be 'W. Baldwin' with a small flourish at the end.

Wade Baldwin, CFP
Chair, National Board of Directors