

May 27, 2019

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

DELIVERED VIA EMAIL: [rday@osc.gov.on.ca](mailto:rday@osc.gov.on.ca)

Dear Mr. Day,

**Re: Ontario Securities Commission  
2019-2020 Draft Statement of Priorities**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Ontario Securities Commission's (OSC) 2019-2020 Draft Statement of Priorities.

## **1. ABOUT ADVOCIS**

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, critical illness and disability insurance.

## **2. INTRODUCTION**

We commend the OSC for its commitment to taking action to reduce regulatory burden through the establishment of the Burden Reduction Task Force (the Task Force). We feel encouraged that the OSC is looking at ways to modernize securities regulation by promoting efficient, outcomes-focused rules. Having said this, we believe that any burden reduction exercise is incomplete without a consideration of the larger, outdated product-focused regulatory framework governing financial advisors.



As recently reported in the media,<sup>1</sup> Ontario is the most heavily regulated province in the country. Organizations such as the Canadian Federation of Independent Business (CFIB) and the Ontario Chamber of Commerce have surveyed their membership and found that Ontario's regulatory burden is a cause for concern as it is impacting business' ability to compete. The survey results reported by these two groups are a clear indication that regulatory reform is necessary in the province.<sup>2</sup>

Advocis continues to believe that Ontario's regulatory reform should include the professionalization of the financial advice sector. As we have said in the past, the current regulatory framework is centered on the sale of product and not on the delivery of financial advice. This approach to regulation does not align with today's reality wherein consumers expect more than just product sales from their financial advisors, but also goals-oriented holistic advice.

The OSC is also looking to encourage an environment that is supportive of innovative financial business models, such as fintech. 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 also be attuned to the evolution that is taking place within established financial advice channels.

### **3. IDENTIFYING, MEASURING AND ADDRESSING REGULATORY BURDEN**

In the 2019 Ontario Budget, the Government indicated its understanding of how excessive regulation and red tape is adversely impacting Ontario businesses and economic growth. To ensure that Ontario's financial services sector continues to thrive and remain competitive, this Government has made regulatory burden reduction a priority and has committed to taking action to eliminate duplicative and outdated regulatory requirements. These actions include

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<sup>1</sup> Financial Post. *Ontario now has the worst regulatory burden of all. Here's how to fix that.* October 26, 2018. At: <https://business.financialpost.com/opinion/ontario-now-has-the-worst-regulatory-burden-of-all-heres-how-to-fix-that>.

<sup>2</sup> According to a CFIB survey, the total cost of regulation in Ontario was estimated at \$15 billion in 2017. Out of 13 categories, financial regulation (which includes insurance and securities regulation) ranked as the fifth most burdensome to businesses in terms of time and money spent on compliance. Survey respondents indicated that excessive regulation discourages business growth (61%) and reduces productivity (68%), which in the end can undermine confidence in the economy. (CFIB, *The Cost of Government Regulation on Canadian Businesses* (January 2018), at: [https://www.cfib-fcei.ca/sites/default/files/2018-01/Cost-Red-Tape-Snapshot-2018\\_0.pdf](https://www.cfib-fcei.ca/sites/default/files/2018-01/Cost-Red-Tape-Snapshot-2018_0.pdf).)

Similarly, the Ontario Chamber of Commerce's 2018 Ontario Economic Report noted that more than half of its members surveyed (53%) indicate that overregulation is a cause for concern. Specifically, Ontario businesses considered navigating regulation and red tape as critical to their organization's ability to succeed. (Ontario Chamber of Commerce, *2018 Ontario Economic Report*, at: <http://occ.ca/wp-content/uploads/2018-Ontario-Economic-Report-8.pdf>.)



coordinating with the Task Force and deploying a five-point capital markets plan – which includes the establishment of the Office of Economic Growth and Innovation within the OSC.

We submit that the Task Force may wish to consider the work of other jurisdictions that have targeted burden reduction. For example, the UK's Better Regulation Task Force (BRTF)<sup>3</sup> identified five principles of good regulation to determine if any regulation is fit-for-purpose; these include: proportionality, accountability, consistency, transparency and targeting.<sup>4</sup> These principles were endorsed by the UK government of the time and are still the basis of the UK's better regulation framework. Please see Appendix A for more on the Five Principles of Good Regulation. These principles provide a lens through which the Task Force can evaluate the efficacy of existing regulation.

In addition to these principles, the BRTF was mandated by the UK government to take into consideration the Dutch approach<sup>5</sup> when making recommendations on how to further reduce the regulatory burden. The Dutch approach consists of three main components focused on reducing administrative costs, saving businesses money and freeing up people's time for more productive activities. Following are the description of each component of the Dutch approach:

- 1. Measuring the administrative burden:** the Dutch came up with a Standard Cost Model formula to measure the cost of the obligation associated with every regulation.<sup>6</sup>
- 2. Commitment to a target:** setting a target and a time frame to achieve this objective encourages innovation and stakeholder engagement.
- 3. Organizational structure:** measuring and setting a target will not be successful unless there is a structure in place to achieve the target; this will require the participation of governments, regulators and stakeholders.

We see the creation of the Task Force as the foundation for the third component of the Dutch approach, and its engagement of stakeholders as fulfilling the organizational structure. As part of its work, we urge the Task Force to take steps to measure the burden of particular

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<sup>3</sup> The Better Regulation Task Force was replaced by the Better Regulation Commission, an independent body responsible for advising government on reducing unnecessary regulatory and administrative burdens. The Better Regulation Commission closed in 2008 and was replaced by the current Better Regulation Executive.

<sup>4</sup> Better Regulation Task Force, *Regulation - Less is More: Reducing Burdens, Improving Outcomes* (March 2005) at: [https://www.regulation.org.uk/library/2005\\_less\\_is\\_more.pdf](https://www.regulation.org.uk/library/2005_less_is_more.pdf).

<sup>5</sup> *Ibid.*

<sup>6</sup> The mechanics of the Standard Cost Model used the following formula:  $N \times W \times T$ , where:  
N = number of businesses affected by the obligation;  
W = hourly tariff of those involved in meeting the information obligation; and  
T = number of hours taken to meet the administrative obligation in a year.



regulations, in dollar terms, and commit to specific targets and timeframes in order to focus the efforts of all involved and enhance the accountability of the exercise.

### **3.1 Our specific concerns with securities sector regulatory burden**

#### **3.1.1 Cost-benefit analysis**

We strongly believe that the cost of regulation should not exceed its benefits, and that sound regulatory policy must include a comprehensive and transparent cost-benefit analysis. We agree with the Canadian Cost-Benefits Analysis Guide that “[t]he cost-benefit analysis should be guided by the principle of proportionality. In other words, the effort to do the cost-benefit analysis should be commensurate with the level of expected impacts on Canadians.”<sup>7</sup>

The OSC is required by the *Securities Act* to provide “[a] description of the anticipated costs and benefits of [a] proposed rule.”<sup>8</sup> Respectfully, we have not seen the regulator regularly conduct and report fulsome and comprehensive cost-benefit analyses of its proposed rules; at times, these analyses seemed to be somewhat cursory, stating the regulator’s belief that the benefits of the proposed rule would outweigh its costs. We understand that more accurate calculations can be difficult to do, but they should be done as thoroughly as practicable and accompanied by meaningful analysis.

It is vital that this analysis is conducted to ensure that proposed regulations are as narrow and efficient as possible in delivering their desired policy outcomes, and that they would not impose unnecessary burdens on market participants or create unintended consequences. We urge the OSC to place a renewed emphasis on this statutory requirement.

#### **3.1.2 Outside business activities**

Our members find the reporting requirements for outside business activities (OBAs) to be particularly burdensome. While we understand the importance of reporting to securities regulators activities that could put registrants in positions of undue influence vis-à-vis their clients, or activities that could create conflicts relative to their clients’ interests, the current OBA regime is overbroad and not sensitive to the type of activity captured.

For example, the current OBA regime captures activities such as the following, none of which we believe represent the consumer protection concerns that the reporting requirements were intended to capture:

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<sup>7</sup> Treasury Board of Canada Secretariat, *Canadian Cost-Benefit Analysis Guide – Regulatory Proposals* (2007) at: <https://www.tbs-sct.gc.ca/rtrap-parfa/analys/analys-eng.pdf>.

<sup>8</sup> *Securities Act*, R.S.O. 1990, c. S.5, s. 143.2(1) .



- Coach of a child’s sports team
- Committee chair of a college graduation class, responsible for planning reunions
- Convenor of a social club, arranging for guest speakers for events
- Director of a condominium corporation

The OSC should encourage registrants to be active in their communities, rather than making registrants shy away from public service under threat of regulatory reprimand.

Our members have also received fines from the OSC for activities firmly outside the securities sector: one mutual fund dealer had an advisor leave the dealer, only to return a few months later. But in the interim, the advisor changed his life insurance affiliation and forgot to tell the dealer. It was eventually picked up by the dealer and reported on the National Registration Database. At all times, the dealer had nothing to do with the advisor’s insurance business. Nonetheless, the dealer was fined \$5,000 by the OSC.

In our view, it is hard to see how the public interest was injured in a way that warrants the severity of the punishment. The insurance carrier and MGA are both regulated by the insurance regulator. The dealer should not be expected to supervise or even monitor insurance-related activity. Once the OSC is aware the advisor conducts insurance activity, whether the advisor changes his MGA or insurance carrier should be irrelevant.

Based on the foregoing, we believe a materiality threshold should be introduced for OBA reporting, below which the reporting of OBAs should not be necessary. The current inflexibility with respect to filings and the imposition of late filing fees makes registrants reticent to report activities in the first place. Further, OBA reporting requirements tend to be inconsistent across CSA jurisdictions, reducing the policy effectiveness of having this reporting requirement at all.

The reality is that there are relatively few situations where OBAs amount to true issues that could harm consumer outcomes; it is on these instances which the OSC should be focusing. In order to reduce the regulatory burden associated with OBA reporting, we recommend that the OSC work with its CSA counterparts on a more consistent and harmonized approach to OBA reporting and filing that includes: (i) a materiality threshold for reporting OBAs; and (ii) a grace period for reporting material OBAs. We recognize that the OSC is working on an expedited basis towards a moratorium on late filing fees as a temporary measure, which we see as a step in the right direction.

### ***3.1.3 Ongoing consultation regarding client-focused reforms***

We look forward to working with the OSC and its CSA counterparts regarding the next iteration of the client-focused reforms (“CFRs”). As we have stated previously,<sup>9</sup> we believe that the CFRs

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<sup>9</sup> Advocis’ response to the proposed CFRs is available at <https://www.advocis.ca/regulatory-affairs/RA-submissions/2018/181019-Advocis-Response-to-CSA-re-CFR.pdf>.



are too narrowly focused on costs and not the value that consumers receive, relative to cost. Moreover, the CSA's proposed reforms to KYC, disclosure, conflicts of interest administration and particularly the approach to KYP carry a real risk of adding tremendously to the regulatory burden – which would run counter to stated priority.

The CFRs could add costs in regards to advisor training, documentation, compliance systems and more, and these costs are ultimately borne by consumers. Before releasing the next iteration for consultation, we urge the CSA and OSC to review the CFRs through the lens of its burden reduction initiative.

### **3.1.4 The role of regtech in reducing burden**

The United Kingdom's Financial Conduct Authority (the "FCA") is a leader in exploring how technology applied to regulation ("regtech") can help reduce the regulatory burden. In February 2018, the FCA launched a call for input regarding how regtech can be used to achieve smarter regulatory reporting.<sup>10</sup> It issued an interim report in March 2019 that found that regtech's potential is enormous, but there needs to be changes to traditional regulatory culture and responsibilities to realize this potential.<sup>11</sup> This exercise built upon the FCA's 2017/2018 Business Plan which spoke to its intention to explore how near and real-time compliance monitoring can reduce regulatory burden and costs for firms.<sup>12</sup>

The FCA has made it clear that it sees regtech as a solution for reducing its own costs and the costs of those it regulates, while improving regulatory quality and consumer protection. We urge the OSC to study how regtech can be deployed in its operations to make the organization more efficient and cost effective.

## **4. IMPROVING RETAIL INVESTORS' EXPERIENCE**

The current regulatory framework is based on an outdated structure focused on regulating product sales and not the delivery of financial advice. This type of regulation no longer represents the needs and expectations of investors, nor the holistic role that modern professional financial advisors play in guiding and educating investors through life's major financial decisions. In our view, to truly improve retail investors' experience, regulation must

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<sup>10</sup> Financial Conduct Authority, *Call for Input: Using technology to achieve smarter regulatory reporting* (February 2018) at: <https://www.fca.org.uk/publication/call-for-input/call-for-input-smarter-regulatory-reporting.pdf>.

<sup>11</sup> Financial Conduct Authority et al., *Digital Regulatory Reporting: Pilot Phase 1 Report* (March 2019) at: <https://www.fca.org.uk/publication/discussion/digital-regulatory-reporting-pilot-phase-1-report.pdf>.

<sup>12</sup> Financial Conduct Authority, *2017/2018 Business Plan* (April 2017) at: <https://www.fca.org.uk/publication/business-plans/business-plan-2017-18.pdf>.



align with their experience – so regulation should be based on the quality of the advisor-client relationship instead of product sales.

We continue to support the push for higher standards for financial advisors to ensure consumer confidence in financial advice. Investors should be able to trust that their advisor is qualified and competent – but we know this isn't always the case due to the gaps in the regulatory framework. Currently in Ontario, anyone can call themselves a financial advisor or a financial planner regardless of their qualifications, skills or experience. Based on a recent survey conducted by Abacus Data on behalf of Advocis, 56% of respondents believe that the title “financial advisor” is already regulated.<sup>13</sup> This situation puts consumers at risk.

To ensure consumer protection and justify their confidence in advisors, Advocis believes that financial advice should be elevated to a true profession. The restriction of professional titles with meaningful credentials is a major step in that regard, so we welcomed the Ontario Government's April 11 budget announcement that it will regulate the titles of “financial advisor” and “financial planner”. This action aligns with Abacus Data's survey results indicating that 91% of respondents support legislation to protect titles.<sup>14</sup> We see the Government's proposal as an important step towards improving the experience of retail investors, a priority that the OSC has identified in its Draft Statement of Priorities.

To further this objective, we would like to work with the Ontario Government and the OSC to jointly take a leadership role in modernizing the regulatory framework. As the oldest and largest membership association of financial advisors in Canada, Advocis has much to offer. We would be pleased to provide our industry knowledge and expertise to support the government's mission.

## **5. SUPPORT FOR THE CAPITAL MARKETS REGULATORY AUTHORITY**

Advocis supports the OSC in its transition to the Capital Markets Regulatory Authority (CMRA). We view this transition as the path to creating much needed harmonization characteristic of a modern securities regulator and we are aware of the significant role that the OSC has taken in addressing outstanding issues amongst the participating provinces. However, true harmonization cannot be achieved without having all provinces and territories involved, especially as some major capital markets jurisdictions have yet to sign onto the system.

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<sup>13</sup> Advocis, *Advocis Supports the Government of Ontario Taking Action on Title Protection* (April 11, 2019) at: <https://www.newswire.ca/news-releases/advocis-supports-the-government-of-ontario-taking-action-on-title-protection-853396001.html>.

<sup>14</sup> Advocis, *Majority of Ontarians unaware financial advisors lack professional regulation* (October 25, 2018) at: <https://www.newswire.ca/news-releases/majority-of-ontarians-unaware-financial-advisors-lack-professional-regulation-698526641.html>.



As the regulator from a leading CMRA jurisdiction, we ask that the OSC continue to take a leadership role in extolling the benefits of having a streamlined capital markets regulatory system when engaging its counterparts from non-participating jurisdictions. In order to fully realize the potential of the cooperative system, it is vital that all jurisdictions participate.

## **6. INNOVATION**

Investors are no longer looking to just purchase financial products, but instead seek holistic advice that will help them reach their financial goals. These increased expectations also impact the way that people want to access financial products. Financial technologies are rapidly responding to these changes in consumer appetites, aiming to provide the services that investors want, in the manner that they want them.

The OSC has identified the growing importance of the fintech sector. The OSC's LaunchPad, for example, was created to help new fintech companies providing innovative financial products navigate the regulatory framework and offer flexibility around regulatory obligations. Interestingly, the regulator 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.

While investors' appetite for innovative investment options such as robo-advice is increasing, so is the need and value for personalized, professional financial advice. According to a study by Accenture Consulting, despite the rise of digital tools, investors across all models still want advisor access for advice and guidance. In fact, 51% of investors still see human advisors as the most reliable option for new investment ideas and 57% of investors feel that human advisors provide the best customized financial advice.<sup>15</sup> This model is not only being favoured by millennials, but by Generation X and Baby Boomers alike.

Regulators have demonstrated that they are prepared to take steps to foster the development of fintech companies, which is a mindset we support; yet, in our view, regulators are not taking the same cooperative approach towards the evolution taking place in traditional financial advisory channels. We encourage the OSC to embrace developments taking place in all streams of product advice and delivery, and bring that same entrepreneurial mindset and openness to industry collaboration to the traditional channel.

## **7. CONCLUSION**

We appreciate this opportunity to provide our comments to the OSC as it works toward identifying measures to modernize regulation, facilitate innovation and reduce the regulatory

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<sup>15</sup> Accenture Consulting, *The New Face of Wealth Management in the Era of Hybrid Advice* (2017) at: <https://www.accenture.com/acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Consulting/Accenture-New-Face-of-Wealth-Management-Hybrid-Advice.pdf>.





burden. We ask that the OSC be mindful of the important role of financial advisors in achieving these goals and the opportunities for Advocis to work collaboratively with the OSC.

Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Legal and Regulatory Affairs at 416-342-9837 or [eskwarek@advocis.ca](mailto:eskwarek@advocis.ca).

Sincerely,

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

Al Jones, CFP, CLU, ACCUD, ICD.D  
Chair, National Board of Directors



## APPENDIX A

<b>Five Principles of Good Regulation</b> Better Regulation Task Force (United Kingdom)	
Proportionality	Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimized.
Accountability	Regulators must be able to justify decisions, and be subject to public scrutiny.
Consistency	Rules and standards must be joined up and implemented fairly.
Transparency	Regulators should be open, and keep regulations simple and user-friendly.
Targeting	Regulation should be focused on the problem, and minimize side effects.