Raising The Professional Bar


A New Way Forward

Advocis®
The Financial Advisors Association of Canada
Dear colleague,

Financial advisors play a central role in helping millions of Canadians realize their goals and aspirations. Families and businesses across Canada rely on advisors to provide advice on and access to suitable financial products and services. Obviously, Canadians should be able to place their confidence in their advisors, trusting that he or she meets rigorous standards of professionalism, proficiency and accountability. Unfortunately, this is not always the case.

Let’s justify Canadians’ confidence in advisors
In a country which has professionalized everything from accountants to veterinarians, it is surprising that anyone can hold themselves out as a financial advisor, regardless of training, licensing or financial acumen. What’s more, important consumer safeguards on those who sell financial products such as mandatory continuing education and minimum levels of errors and omissions insurance vary widely by both province and industry sector. All too often, our current patchwork of laws and regulations leaves consumers exposed to unnecessary risks, such as incompetence and even outright fraud.

Let’s raise the professional bar for all financial advisors
Advocis has a straightforward, cost-effective and efficient solution to this patchwork problem: a requirement that anyone who holds himself out to the public as a financial advisor be required to maintain membership in a recognized professional association of financial advisors. The provincial government would accredit only those advisor associations which meet our proposal’s strict professional criteria. Advisors would be free to choose which association they wish to join; and consumers could pick their advisor based on the reputation of the advisor, his employer, and his association.

This professional association model will significantly enhance consumer protection. Consumers will be able to easily verify their advisor’s credentials and disciplinary history across industry sectors. Advisors will have to comply with rigorous proficiency requirements and obey professional and ethical standards of conduct. An effective complaints and disciplinary process will deal with “rogue” advisors. And regulators and distributors will realize a variety of efficiencies through ongoing improvements in the competencies of all advisors.

Let’s complement existing regulation, not duplicate it
The existing regulatory framework primarily focuses on insurance and securities products. Rather than introduce yet another layer of regulation, Advocis’ proposal simply closes off current regulatory gaps. The result will be a regulatory regime which will provide effective review of the comprehensive approach to financial advice that most Canadians receive.

Given the tremendous gains our model promises to deliver to regulators, product producers and distributors, advisors and, most critically, Canadian consumers, now is the time to raise the professional bar.

Yours truly,

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Appendix A: The Current Regulatory Framework and the Professional Association Proposal

About Advocis
Financial advisors play a critically important role for millions of Canadians. Through the provision of financial planning and investment advice, retirement and estate planning, disability coverage, long-term care and critical illness insurance, advisors help the public prepare for life’s events and secure their financial futures. This is ever more important in an economic climate where governments, facing their own fiscal challenges, are expecting Canadians to be increasingly self-reliant.

Given their critical role, Canadians should be able to trust that financial advisors are proficient, up-to-date in their knowledge and in compliance with the highest standards of conduct and ethics. While this aptly describes the majority of advisors, there are inevitably some who do not meet these standards, and due to gaps in the current regulatory framework, consumers are exposed.

Problem #1: Anyone can call themselves a financial advisor, which means consumers face significant – and unnecessary – risk exposure.

Anyone, regardless of their training, experience or education, can hold themselves out to the public as a financial advisor – which means that anyone can provide the public with what is purported to be “financial advice”, even with little or no financial acumen. This regulatory gap is exploited by fraudsters such as Earl Jones, who represented himself as a financial advisor despite not being registered with securities authorities. This is an extreme example, but it highlights the significant harm consumers could suffer when they place their trust in a title that they believe is regulated, but which does not actually guarantee any expertise.

Problem #2: Existing regulation is focused on the sales of products, not the ongoing relationship of trust between financial advisors and their clients.

Financial advisors help clients develop comprehensive financial plans and provide advice on investments that can help achieve those plans. This is often a multi-year relationship built on the client’s trust in the advisor’s expertise. Advocis believes that all professionals in such positions of trust should subscribe to a code of conduct and ethics that establishes an overriding duty to their clients. They should also maintain errors and omissions insurance to protect clients in the event that the advisor fails to live up to that code.

But rather than focusing on this important relationship, existing regulation is based on the sales and distribution of financial products, and is further fragmented based on the type of product, whether it be life insurance, mutual funds or other securities. There is no industry-wide requirement that advisors subscribe to codes of conduct or maintain responsible levels of errors and omissions insurance. The result of this is that, depending on the type of product purchased, consumers could be receiving substandard levels of protection. Advocis believes that consumers should enjoy high
degrees of protection governing their entire advisory relationship, and this should not vary with the type of financial product that is needed to fulfill the consumer’s financial plan.

Problem #3: There is no firm and clear requirement for advisors to keep their knowledge current.

Before obtaining their license to sell life insurance, mutual funds or other securities, financial advisors must demonstrate their initial proficiency in the product. Life insurance advisors are required to meet provincial licensing standards and to pass the Life License Qualification Program. The Mutual Fund Dealers Association of Canada (MFDA) designates as Approved Persons those individuals who meet the MFDA’s registration standards and pass a designated mutual funds licensing exam. The Investment Industry Regulatory Organization of Canada (IIROC) designates as Registered Representatives those individuals who meet IIROC’s registration standards and pass the Canadian Securities Course.

While these measures ensure the advisor’s understanding of the product at the time of licensing, the industry is constantly evolving and static knowledge quickly becomes obsolete. But under the current framework, regulators’ requirements for continuing education (CE) vary by product sector and even by province. In the life insurance sector, some provinces require advisors to complete several CE credit hours each year, some permit holders of educational designations to satisfy reduced requirements, and other provinces have no CE requirements whatsoever. For mutual funds, MFDA Rules speak only vaguely to CE, stating that it “should be provided”. IIROC takes a clear stance and requires that advisors complete CE on both compliance and professional development matters.

Advocis believes that, regardless of product sector or province, advisors should be required to complete CE to maintain their license in good standing. Current regulations could allow advisors to become seriously deficient in their knowledge, posing a risk to consumers.

Problem #4: There is no effective, industry-wide disciplinary process.

Individual insurance or securities regulators are empowered to impose a variety of sanctions on advisors found guilty of misconduct, including stripping those advisors of their license or registration. However, a regulator’s enforcement powers are limited to its respective sector - which does not reflect the business reality that the majority of advisors operate across sectors, and in assembling a client’s financial plan, the advisor will likely recommend a combination of products that span those sectors.

This sectoral approach leaves consumers exposed. The types of serious misconduct that warrants an advisor’s outright expulsion from one sector, such as fraud or gross negligence, speak to that advisor’s conduct and ethics and are not sector-specific concerns. But currently, if an advisor is expelled from the mutual fund sector, for
example, that advisor can continue to sell segregated funds in the insurance sector. Advocis believes this type of “sector hopping” must be eliminated.

Also currently lacking is an easy mechanism for the public to verify their advisor’s registration credentials. Regulators maintain their own individual websites where the public can verify their advisor’s registration, but the information is valid just for that sector. Generally, the public does not understand the product-centred approach to regulation and the need to verify their advisor’s status with each individual regulator. In the example above, if the advisor’s client had only reviewed the advisor’s standing with the provincial insurance regulator, the client would not have become aware of the serious sanction in the mutual funds sector.

**The Solution: Require that Financial Advisors belong to an Accredited Professional Association**

Fortunately, the solution to the problems identified above is simple, straightforward, and does not require significant government action or resources: anyone using the professional title of “financial advisor” should be required to maintain ongoing membership in an accredited professional association.

To be accredited, the professional association would be required to have the following characteristics:

- a code of conduct and ethics requiring, inter alia, the prioritization of the client’s best interests;
- a requirement that members maintain errors and omissions insurance;
- elevated minimum initial proficiency standards, including addressing the proficiency standards of fee-only planners who do not sell financial products;
- continuing education requirements that address both substantive and professionalism matters;
- a best practices manual or practice handbook and information resources for members;
- a governance structure that includes representation from both financial advisors and the public;
- a complaints and disciplinary process that empowers the association to suspend or cancel the advisor’s membership; and
- a public-facing database whereby clients can conduct a “one-stop” check of their advisor’s credentials and disciplinary history.

Today, many financial advisors voluntarily choose to belong to professional associations such as Advocis that feature many of the characteristics listed above. These associations help advisors maintain high professional standards in serving their clients. This proposal seeks to codify that commitment to professionalism to encompass all advisors, and builds on the current sales-focused regulatory framework.
In essence, the proposed solution emphasizes proficiency, ethical standards, and accountability in the client-advisor relationship.

Membership in a professional association would mean that sellers of financial products and services put the interests of consumers first and provide them with proficient professional service. In particular, consumers would benefit through:

- the ability to review the credentials and disciplinary history across product sectors of a prospective financial advisor in an easily-accessible format;
- greater assurance that the financial advisor they select will meet a consistently high level of professionalism and accountability;
- greater protection from unqualified and unethical financial advisors, due to both higher licensing standards and the presence of errors and omissions insurance; and
- a responsive and robust complaints and disciplinary process that can remove unscrupulous actors from the industry and prevent further harm.

Regulating usage of “financial advisor” is timely, appropriate and necessary

Financial advisors are one of the last groups of specialized practitioners whose professional title is not regulated by law. While other professions such as medicine, law and engineering have had their professional titles regulated for over a century or more, in recent years many other areas of professionalized activity have become similarly regulated. For example, in Ontario, the title of Social Worker is restricted to registrants of the Ontario College of Social Workers and Social Service Workers, and in Alberta, the Alberta Boilers Safety Association, and the Petroleum Tank Management Association of Alberta is restricted to registrants of these associations.

With so many people struggling to meet their retirement goals, with new families starting out without proper financial planning in place, and with government policies increasingly shifting the responsibility for Canadians’ future financial needs onto individuals, now is the time to regulate the use of the professional title of “financial advisor.”
This paper now turns to a more detailed look at the characteristics of proposed professional associations. (For an overview of the current regulatory framework, its shortcomings, and the virtues of the proposed professional association model, please see Appendix A, attached hereto.)

**a. Who will belong?**

Subject to several narrow and easily identifiable exceptions listed below, everyone who sells financial products to consumers, and everyone who offers financial advice and planning to the public, should be required to maintain membership in a recognized professional association. This would include:

- individuals who are licensed to deal with the public with regard to life and health insurance under insurance legislation;
- individuals who are registered by a securities regulator in any advisor category under National Instrument 31-103 and are licensed to sell or provide advice to the public with respect to financial products;
- individuals who hold themselves out by titles or claimed credentials that suggest financial advice-giving expertise, such as “financial advisor,” “investment advisor,” “wealth planner,” “wealth advisor,” “financial planner,” “estate planner,” and “retirement planner” or such other titles as may be designated by regulation, regardless of whether they are required to be licensed or registered to sell or provide advice regarding financial products; and
- individuals who hold themselves out as pensions or group benefits consultants who are not otherwise captured by the criteria above.

**b. Who will be excluded?**

It is important to note that the professional association requirement will not capture these clearly identifiable classes of financial services practitioners whose activities may be characterized as a form of “financial advice,” such as:

- mortgage brokers and real estate agents;
- bank tellers who offer advice about deposit products;
- licensed accountants (CAs, CGAs, and CMAs) who provide financial advice ancillary to their provision of accounting and tax advice; and
- lawyers who offer financial and tax advice ancillary to providing legal advice.

**c. Membership in a professional association as a condition of continued licensing**

Individuals who hold themselves out as financial advisors would be required to belong to a professional association. Proof of membership would be a condition of the individual's registration or licensing (including license renewals) in the securities or insurance sectors. If an individual ceases to be a member of a professional association, his or her licensing or registration would also contemporaneously be in abeyance.
d. Regulators will designate associations

The relevant regulator would publicly designate as an approved professional association any membership association which it recognizes as fulfilling the necessary criteria (as described in Section 1 of this document). This would require regulators to draft the conditions of recognition necessary for accreditation as an approved professional association, to identify existing organizations as plausible candidates for recognition, and to invite candidate organizations to apply for recognition.

To be successful in their application for accreditation, candidate associations would have to agree to the following conditions:

• a commitment to meet specific criteria, which could include guidelines for the management and governance of all aspects of the operation of the association;
• execution of a memorandum of understanding with the regulatory body whereby the candidate association agrees to meet the aforementioned criteria while maintaining its accreditation;
• a commitment to pay for periodic audits, commencing with an audit within 12 to 18 months following recognition; and
• an acknowledgment that the regulatory body may revoke recognition of the candidate association.

It is likely that more than one association would be recognized by the regulator at the outset of implementing the proposed professional association model. Recognized associations would register financial advisors as members while building the systems and infrastructure required to meet their commitments to the regulator. If a professional association was found to have failed to meet its obligations and is unable to correct such deficiencies within a reasonable period, its recognition could be terminated. At that point, the defunct organization’s members would be required to transfer to another professional association, and be directed to meet the new association’s registration requirements within a specified period of time.

e. Proficiency standards for all financial advisors

All recognized professional associations would publish their proficiency standards. All financial advisors would be required to file an annual Certificate of Professional Standing issued by their association, as a condition of ongoing licensing or registration in the industry. In addition, all financial advisors would be required to meet a proficiency standard that encompasses the knowledge and competencies that their recognized professional association considers to be appropriate.

Initial proficiency standards for membership would be premised on the assumption that everyone who is licensed or registered to sell financial products meets the initial requirements for membership in a recognized professional association. However, all members would be required to fulfill ongoing continuing education requirements, which would have a structured component.
Accordingly, all recognized professional associations would accept, for the purposes of admitting individuals to membership, certain approved evidence of initial proficiency. For individuals who are life agents or securities representatives, sufficient evidence would lie in the fact that they currently meet the respective licensing or registration requirements for life agents or securities representatives. In the case of the individual who is a fee-only financial planner and receives no compensation directly or indirectly from the sale of financial products, the evidence of initial proficiency would lie in the fact that he or she currently holds a recognized financial planning designation. However, associations could, upon application, designate an individual as proficient, based on relevant education and industry experience.

The following designations would be granted initial proficiency recognition, provided that the fee-only advisor is in good standing with one of the designation-granting bodies:

- Certified Financial Planner™ (CFP™), sponsored by the Financial Planning Standards Council;
- Personal Financial Planner (PFP™), offered by Canadian Securities Institute;
- Certificate in Financial Planning (Planificateur financier [Pl. fin.] designation), sponsored by the Institut québécois de planification financière (IQPF);
- Registered Financial Planner (R.F.P.), sponsored by the Institute of Advanced Financial Planners;
- Chartered Financial Consultant (CHFC), sponsored by Advocis, the Financial Advisors Association of Canada;
- Certified Health Insurance Specialist (CHS™), sponsored by Advocis, the Financial Advisors Association of Canada;
- Chartered Life Underwriter (CLU®), sponsored by Advocis, the Financial Advisors Association of Canada; and
- Chartered Financial Analyst (CFA), sponsored by the CFA Institute.

Under the proposed model, all financial advisors who hold themselves out as financial planners would be required to hold in good standing one of the above-noted financial planning designations.

**f. Continuing education requirements**

All financial advisors would be subject to ongoing continuing education requirements. These would include course requirements established by professional associations in consultation with industry regulators and firms. Individuals would be given credit by their association for mandatory continuing education taken in compliance with the requirements of regulators, but could be subject to additional requirements set by their professional association of choice. For example, all financial advisors could be required by their association to take courses on professional ethics and their association’s code of conduct within a specified time after becoming members.
The main features of the proposed membership model with regard to continuing education include:

- all financial advisors would be required to fulfill competency-based continuing education requirements established by their association;
- professional associations would complement the proficiency standards and continuing education requirements of regulators and coordinate their continuing education programs with the requirements of regulators;
- professional associations would be required to credit their members for all continuing education completed in compliance with the requirements of a securities or insurance regulator or licensing body; and
- professional associations would develop systems that facilitate the tracking of continuing education course requirements and course completions, with such systems being readily accessible to members and regulators; and
- professional associations would require all members to take continuing education courses related to professional ethics and to the association’s professional standards and code of conduct, within a prescribed period of time after an individual becomes a member of the association.

g. A code of professional conduct
All financial advisors would be required to subscribe to their professional association’s code of professional conduct, and abide by their association’s rules of professional conduct in all of their dealings with third parties (i.e., the application of the code and rules would not be limited to the financial advisor-client relationship). Any code of professional conduct would of necessity establish and explicate:

- the priority of the client’s interest;
- issues of misconduct (including criminal convictions and regulatory infractions);
- the duties surrounding conflicts of interest;
- the duty to provide competent service;
- the duty to act with honesty and integrity;
- the duty to preserve and protect client confidentiality; and
- the duty to cooperate with the association and regulators.

h. An errors and omissions insurance requirement
All financial advisors, and their corporations and/or agencies, would be required to carry professional liability insurance relating to the activities they ordinarily engage in as financial advisors.

i. A public registry of financial advisors
Professional associations would participate in a public registry of financial advisors which would be accessible on the Internet and through other appropriate modes
of public inquiry. The public registry would enable any member of the public to conveniently access information about an individual’s qualifications and registration/licensing status and professional conduct as a financial advisor.

j. A best practices manual and information resources for members

Professional associations would be required to compile and make available online a best practices manual/practice handbook. They would also be required to prepare and circulate information materials, such as online and e-mail bulletins concerning regulatory requirements and developments, and membership disciplinary proceedings.
For reasons of Canadian constitutional law, the proposal for financial advisors to belong to a professional association would need to be implemented at the provincial level. Securities and insurance regulators would require individuals who are licensed to sell financial products, or who otherwise hold themselves out to the public as financial advisors, to belong to an association. Fee-only financial planners who do not sell financial products and are outside the scope of securities and insurance legislation would still be required to be members of an association.

### a. Models of self-governance: self-regulatory organization vs. delegated administrative authority

The professional association must be recognized as an official regulatory body of financial advisors by provincial governments. This recognition can be accomplished in two primary ways: (i) as a full-fledged self-regulatory organization; or (ii) as a delegated administrative authority.

#### (i) self-regulatory organization

The self-regulatory organization model is the traditional approach to professional self-regulation. Examples of organizations constituted under this model include the Law Society of Upper Canada, the College of Physicians and Surgeons of Ontario, the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada.

Regulatory power is vested in these organizations through provincial legislation (such as the Law Society Act) or official recognition by a government agency (such as a CSA recognition order of the MFDA). Obtaining this recognition is relatively challenging; the vetting process is rigorous, the standards to be met are high and the process can take several years.

Once approved, though, this model grants the organization a relatively large degree of autonomy – the organization is empowered to make rules governing a wide array of matters (including newly emerging areas) without having to go back to the province for approval. They are not subject to continuous government oversight; they are largely trusted to govern their own affairs, with only occasional reporting to, and reviews by, the government. To maintain the public’s confidence as being a true professional regulator, they generally do not engage in any public-facing advocacy efforts that promote the profession or the organization’s members.

#### (ii) delegated administrative authority

The delegated administrative authority (DAA) model is a relatively new way of obtaining recognition as a professional regulator. DAAs are not-for-profit corporations that assume the day-to-day operational responsibility for licensing, education, complaints handling, inspection and enforcement matters as described in government legislation. DAAs reduce the government’s footprint: the association’s employees...
are not public servants and they are self-financing, largely through fees paid by
the association’s members. This model has gained acceptance in several provinces:
notable examples include Ontario’s Travel Industry Council, Alberta’s Boilers Safety
Association, and the British Columbia Safety Authority.

While the process of obtaining DAA recognition is less cumbersome than obtaining
recognition as a self-regulatory organization, the powers granted to the DAA are more
limited in scope. The province retains overall accountability and control of relevant
enabling legislation; it monitors and remains accountable for the overall performance
of each authority. DAAs have certain reporting obligations to the government,
such as annual reports and audited financial statements, and they can be subject to
operational reviews.

b. What organizations are likely to qualify for accreditation
as a professional association?
The answer will largely depend on the accreditation standards that are set by the
regulator. Also relevant will be the estimate, on the part of potential applicant
organizations for accreditation, of the potential benefits and costs of meeting the
accreditation standards and of operating as a professional association.

The requirement as outlined is not premised on onerous accreditation standards. It
should be assumed that the standards would not be so burdensome that they would
not be satisfied by a number of existing organizations, including associations that
currently provide professional resources to financial advisors.

c. Requiring membership in a professional association in the
securities sector
Most Securities Acts across the country allow that province’s securities commission
to prescribe rules, including criteria that an applicant must satisfy prior to registration:
see, for example, sections 143 (1) and (2) of the Securities Act (Ontario) or 223 and
224 of the Securities Act (Alberta). Using this discretion, securities commissions
could make membership in an association one of these criteria. Alternatively, National
Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant
Obligations could be amended to require membership in an association as a condition
of registration.

d. Requiring membership in a professional association in the
insurance sector
Most Insurance Acts across the country do not provide the province’s Superintendent
of Insurance with the explicit authority to prescribe licensing conditions. However,
most of these acts do provide broad latitude for the Superintendent to set the
standards for determining whether a candidate is “suitable” for licensing.

Using this broad latitude, the Superintendent could deem that membership in a
professional association speaks to the candidate’s suitability to obtain and maintain
an insurance license in the province. In provinces where the Superintendent is not granted this discretion regarding suitability, the province’s Insurance Act could be amended to either give the Superintendent such discretion, or the membership requirement could directly be prescribed in the Insurance Act.

e. Governance, discipline, and enforcement

(i) promoting the public interest

It is essential that any approved professional association represents the interests of consumers and the broader public interest, as well as the interests of its member financial advisors. Approved professional associations should be not-for-profit entities dedicated to financial advisor professionalism in the public interest. It is essential that professional associations be entirely independent from financial institutions, as well as product manufacturers and distributors.

The governance arrangements of all recognized professional associations, which would be set out in their charters, would include provisions for effective public representation. In particular:

- every recognized professional association would have public directors on its governing body, and also on any board committee responsible for professional conduct, discipline, advocacy, and policy and regulatory affairs; and
- public directors would be appointed in accordance with a suitable process that is appropriately independent in nature and designed to recruit qualified individuals.

(ii) governance issues

Initial membership application. With regard to applying for membership in a professional association, financial advisors would be permitted to apply for membership in an association of their choice. This would be the case even if they are already affiliated with a professional association at the time when they are required to apply to a recognized association for the purpose of membership. For example, the fact that an advisor holds a financial planning designation and is affiliated with the professional association that issued the designation will not make him or her a member of that association for the purposes of the professional association proposal.

Membership suspension or termination. An individual whose membership in a professional association is suspended or terminated as a consequence of his or her association’s disciplinary proceedings, or whose membership is suspended as a consequence of the suspension of his or her license or registration by a regulator, would not be able to be employed in the industry as a financial advisor until he or she is again a member in good standing.

An individual who has had his or her license or registration suspended, cancelled or made subject to ongoing conditions, or who has had his or her membership in an association
suspended, cancelled or made subject to ongoing conditions, would be required to disclose his or her current status when applying for membership with a recognized association.

**Show cause.** An association would be entitled to require an individual who has had his or her license or registration suspended, cancelled or made subject to ongoing conditions, or who has had his or her membership in any association suspended, cancelled or made subject to ongoing conditions, to show cause why he or she is fit to be accepted as a member or to continue as a member.

**Sharing of membership information.** Professional associations and regulators would inform each other in a timely manner with regard to any changes in the membership and licensing or registration status of individuals. Upon being informed that the licensing or registration status of a member has been suspended, revoked, or made subject to conditions, or that the member is the subject of disciplinary proceedings, an association would take appropriate steps. Similarly, regulators would initiate a review of the licensing or registration of an individual upon being informed that his or her association membership has been suspended, revoked or made subject to conditions, or that his or her license or registration has been revoked, suspended or made subject to conditions by another regulator.

It would be necessary to carefully consider how to design a system where licensing and registration and association membership are inter-dependent, so that suspension or termination of any one (licensing, registration, association membership) could result in suspension or termination of the other(s). Fairness and due process implications would need to be studied, and a process would need to be designed to ensure fair treatment for the individual.

(iii) the complaints and disciplinary process

**No duplication.** Professional associations would complement but not duplicate the enforcement and disciplinary functions of regulators. In particular:

- a professional association’s complaints and disciplinary process would enforce the association’s rules and standards;
- a professional association’s complaints and disciplinary process would not replace or supplant the disciplinary process of securities and insurance regulators;
- a professional association would have considerable discretion with regard to the investigation of complaints and the initiation of professional discipline, in order to ensure that association resources are used effectively to protect the public and complement the efforts of regulators; and
- a professional association, in considering whether to investigate complaints or initiate a disciplinary proceeding, would seek to conserve association resources and avoid duplicating the complaints and disciplinary processes of regulators.

**Priority to public protection.** As well, a professional association, in its complaints and disciplinary processes, would give priority to protecting the public by:
• ensuring that individuals who violate industry requirements in any one sector are not permitted to continue to be employed in the industry without further review; and
• exercising its authority to suspend or revoke an individual’s membership in the association in specified circumstances that, while outside the scope of the regulatory jurisdiction of industry regulators, demonstrably indicates a lack of professional integrity or unsuitability to offer financial services to the public (i.e., convictions for criminal and regulatory offences, which indicate a lack of professional or personal integrity).

Initiation of proceedings. A professional association would be entitled to initiate disciplinary proceedings where there is reason to believe that a member has violated the code of professional conduct. Public directors of the association would participate in directing the investigation of complaints and the initiation of disciplinary proceedings. The association would be entitled to initiate disciplinary proceedings whenever it considers it appropriate to do so, and would be empowered, in the course of its disciplinary process, to suspend or terminate membership, and to impose conditions on membership.

Power to delegate. Investigations and the prosecution of disciplinary proceedings could be delegated by a professional association to a third party accountable to the association, which could establish its own hearing panel. Alternatively, two or more professional associations could jointly establish a tribunal to hear and determine matters for any associations willing to participate in a joint fashion. The members of such a tribunal would be drawn from the participating associations.

(iv) advisor competence and incapacity

A professional association could investigate a member’s competence and capacity to provide services to the public, and initiate proceedings and suspend or revoke membership or impose other conditions.

(v) administrative sanctions

A professional association would have the authority to suspend or terminate membership, and to impose conditions on membership for administrative reasons, including for non-payment of fees, for failure to fulfill continuing education requirements, and for suspension or termination of licensing or registration by a regulator.

(vi) cooperation with all industry regulators

Professional associations would cooperate with financial industry regulators with regard to complaints and disciplinary matters. Individual members would be required to consent to the sharing of information with financial industry regulators in regard to complaints and disciplinary matters. In general, a professional association would not proceed with any complaints or disciplinary proceedings in the event other
proceedings, initiated by a regulator and based on the same impugned conduct or circumstances, are already underway. As well, professional associations would cooperate with financial industry regulators with regard to continuing education programs and, when possible, participate in their policy development processes. Finally, the relevant regulators would establish a process for accrediting professional associations and monitoring their compliance with standards.
a. Promoting the interests of clients and consumers

The proposed membership model would promote the consumer interest in a number of areas.

(i) a mandated code of professional conduct and ethics

As noted above, all financial advisors would be required to comply with the code of professional conduct of their association of choice. Such a document would explicitly codify the following:

- recognition of the priority of the client’s interests over those of the advisor;
- duties respecting conflicts of interest, including disclosure to the client of all real and apparent conflicts;
- the duty to provide competent service, performed with honesty and integrity;
- the duty to respect client confidentiality; and
- an accessible enforcement mechanism for disciplining and punishing members for misconduct, including criminal convictions and regulatory infractions.

(ii) proficiency standards and continuing education – the cornerstone of professionalism

Professional associations would establish initial proficiency standards for financial advisors, and would administer continuing education requirements designed to ensure that all financial advisors maintain a high standard of proficiency.

Such associations would be required to actively administer their codes of conduct, so the public is assured that member advisors understand and fulfill the ethical obligations they owe to their clients. Moreover, all financial advisors would be required to file an annual “Certificate of Professional Standing” issued by their association. This would be a condition for maintaining a provincial license or registration to sell financial products – and to ensure that the high standards to provide ongoing financial advice are met.

Individuals who want to hold themselves out as competent practitioners in areas of professional specialization, such as financial planning, would be required to hold in good standing the necessary recognized designations.

Professional associations’ annual continuing education requirements would focus on the financial advisor’s duties to clients. These CE requirements would complement and build on the practice proficiency standards and CE requirements of regulators.

(iii) best practices and member information resources

Professional associations would publish information resources for members, such as a best practices manual, and periodic bulletins updating members on important regulatory requirements and developments, further ensuring client protection.
(iv) professional accountability — integrated across sectors

Professional associations would be empowered to suspend or revoke membership, or impose various conditions on membership for unprofessional conduct, including violations of regulatory requirements, failure to cooperate with regulators, and criminal and regulatory offences. Actions or omissions which impugn or bring into disrepute the advisor’s professional integrity or competence, or that of the profession as a whole, and their suitability to offer financial advice to the public, would be reviewable.

An association’s disciplinary action would have consequences for a member’s ability to sell financial products as a provincial licensee or registrant. If a member of the association is expelled, that individual would be prevented from selling financial products. As well, if any regulator revoked or imposed conditions on a member’s ability to sell financial products, that member’s association would take appropriate action to suspend, revoke or impose conditions on his or her membership. Such measures would further buttress the actions of the particular regulator by imposing conditions on selling products or providing advice.

As noted above, a regulatory requirement that advisors must be in good standing with a professional association would prevent unscrupulous individuals from simply moving to a different financial sector and seeking licensing or registration.

The resulting regulatory umbrella created by professional associations would close current gaps in the enforcement and disciplinary reach of regulators, by ensuring that individuals who violate industry requirements in any one sector would not be permitted to continue activity in the industry without proper review.

Membership associations would have considerable discretion with regard to the investigation of complaints and the initiation of professional discipline, in order to ensure that association resources are used effectively to protect the public and complement the efforts of regulators. Associations would publish disciplinary proceedings and would follow a process of natural justice regarding procedural rights (hearing, tribunal, appeal process, etc.).

(v) ease of public access to information on financial advisors

Professional associations would be required to make information about their members conveniently accessible in a single public database. This would enable the public to easily determine if an individual is a member of a professional association and review his or her credentials.

b. Benefits to other key actors in the securities and insurance sectors

The proposed membership model would work to promote the interests of financial advisors, governments and regulators, and product providers and distributors.
(i) financial advisors would benefit from:

- enhanced public trust, status and confidence in advisors as professionals,
- access to resources that complement and facilitate standards and compliance with regulatory requirements, and
- a raised professional bar, through improved education and standards and the ready removal – in a public and effective manner – of unethical colleagues who tarnish the industry as a whole.

(ii) government and regulators would benefit from:

- the delivery of enhanced consumer protection and the “reining in” of unethical advisors who move from sector to sector;
- additional protection of the wider public from unqualified or unaccountable financial advisors;
- additional professional support for the government policy objective of increased individual financial responsibility for future financial needs;
- a reduced regulatory burden created by the various professional associations proactively complementing the current regulatory requirements and enforcement; and
- the combined expertise of the various professional associations, all of whom will contribute to the development of policy and implementation of effective regulation.

(iii) product providers and distributors would benefit from:

- the reliable professionalism of financial advisors representing their firms and products;
- the prevention of unethical advisors moving from one company to the next; and
- the development of a stronger platform to support the recruitment of new advisors into the industry through enhanced professional standing.
The following table indicates the limitations and drawbacks of the status quo and the benefits to consumers, advisors, and other stakeholders.

## Advantages of professional membership over the status quo

<table>
<thead>
<tr>
<th>Issue</th>
<th>Insurance</th>
<th>MFDA</th>
<th>IROC</th>
<th>Proposed professional association membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is covered?</td>
<td>Insurance agents</td>
<td>Mutual fund salespersons</td>
<td>Securities salespersons</td>
<td>Everyone who holds out as a financial advisor</td>
</tr>
<tr>
<td>Public represented in governance?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Financial advisors are &quot;at the table&quot; when regulators make policy?</td>
<td>Only to a limited extent.</td>
<td>Dealer members of the MFDA are the main stakeholder consulted.</td>
<td>Dealer members of IIROC are the main stakeholder consulted.</td>
<td>All associations will advocate with regulators on behalf of member financial advisors and consumers</td>
</tr>
<tr>
<td>Standards focus on consumer interest or on distributor / dealer interest?</td>
<td>Insurance focus</td>
<td>Mutual fund dealer focus</td>
<td>Securities dealer and consumer focus</td>
<td>Consumer / client relationship focus</td>
</tr>
<tr>
<td>Establishes proficiency requirements for all financial advisors to meet?</td>
<td>Licensing requirements focus on insurance</td>
<td>Registration requirements focus on mutual funds</td>
<td>Registration requirements focus on securities</td>
<td>Builds on standards of insurance, MFDA and IIROC with structured continuing education requirements</td>
</tr>
<tr>
<td>Mandatory competency-based Continuing Education?</td>
<td>No mandatory client-focused content</td>
<td>No specific continuing education requirement</td>
<td>No mandatory client-focused content, but focus on product knowledge to ensure proper service to investing public</td>
<td>Yes. Mandatory courses on ethics, conflicts of interest, duty to client, leveraging, regulatory / compliance developments</td>
</tr>
<tr>
<td>Use of a Code of Professional Conduct outlining duties and obligations to clients and public?</td>
<td>No enforceable dedicated Code of Professional Conduct articulating duty to clients, as such, but Insurance Councils in Western Canada have codified conduct rules in their by-laws</td>
<td>No dedicated Code of Professional Conduct articulating duty to clients, as such</td>
<td>Yes through the importation of CSI's Conduct and Practice Handbook</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Advantages of professional membership over the status quo (continued)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Insurance</th>
<th>MFDA</th>
<th>IIROC</th>
<th>Proposed professional association membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation in a public registry that covers all financial advisors?</td>
<td>No</td>
<td>No</td>
<td>No (IIROC Advisor Report is limited to advisors with IIROC members)</td>
<td>Yes</td>
</tr>
<tr>
<td>Can curtail ability of unethical or unregulated individuals to hold themselves out to the public as financial advisors?</td>
<td>No. Only able to suspend or cancel insurance license.</td>
<td>No. Only able to suspend or cancel status as MFDA advisor.</td>
<td>No. Only able to suspend of cancel status as IIROC advisor.</td>
<td>Yes. Including remedies against individuals who do not belong to an association (the “Earl Jones” problem)</td>
</tr>
<tr>
<td>Ability to prevent employment as a financial advisor of individuals who do not meet standards?</td>
<td>No. Loss of insurance license does not prevent employment as MFDA or IIROC advisor</td>
<td>No. Loss of MFDA status does not prevent employment as IIROC or insurance advisor</td>
<td>No. Loss of IIROC status does not prevent employment as MFDA or insurance advisor</td>
<td>Yes. While an individual’s professional association membership is suspended or cancelled, they are barred from acting as an insurance, MFDA or IIROC advisor.</td>
</tr>
<tr>
<td>Ability to deal with misconduct relevant to integrity and suitability that is not within the regulator or SROs scope?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

With over 11,000 members organized in 40 chapters across Canada, Advocis serves the financial interests of millions of Canadians.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members are professional financial advisors who adhere to an established professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain appropriate levels of professional liability insurance, and put their clients’ interests first.

Across Canada, no organization has members who spend more time working one-on-one on financial matters with individual Canadians than us. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.
Questions?
If you have questions or comments, please contact:

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