

September 4, 2020

Capital Markets Modernization Taskforce
c/o Ontario Ministry of Finance
95 Grosvenor Street
Toronto, ON M7A 1Y8

SENT VIA EMAIL: CMM.Taskforce@ontario.ca

Dear Mr. Soliman,

**Re: Capital Markets Modernization Taskforce
July 2020 Consultation Report**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Capital Markets Modernization Taskforce (“Taskforce”) and its Consultation Report released in July 2020 (the “Consultation Report”).

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.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.



2. INTRODUCTION

Overall, we support the Taskforce’s recommendations outlined in the Consultation Report. We provide specific commentary on certain recommendations in the subsequent section of this submission.

In addition to the matters addressed in the Consultation Report, we believe that the Taskforce’s work would be even more impactful if it considered two additional proposals for inclusion in its final report to the Minister of Finance:

(1) Title protection

In our view, modern capital markets regulation should evolve to fit consumers’ perspectives and needs. For this reason, Advocis remains committed to regulatory reform initiatives in Ontario (and across Canada) that include the professionalization of financial advisors and financial planners. In a poll conducted by Abacus Data on behalf of Advocis, 1,500 Ontarians were asked about the regulation of financial advisors. 56% of respondents believed that the title of “financial advisor” is already regulated, and 91% supported legislation that would regulate the title.¹

With the Ontario Government’s initiative to regulate the titles of “financial advisor” and “financial planner”, we see a significant opportunity to strengthen professionalism and modernize financial services delivery in Ontario by aligning regulatory reality with consumer beliefs and expectations. We believe that title protection is a meaningful way to reduce consumer confusion and ensure that investors are accessing advice from professionals with appropriate credentials, especially as consumers believe that these titles are already protected and are meaningful proxies of the user’s skills, education and experience.

We also believe that title protection can provide burden reduction benefits for both regulators and issuers, as elevating the professionalism of investor-facing intermediaries can result in better KYC, KYP, and suitability outcomes, improved handling of conflicts of interest, and can provide additional conduct oversight through a credentialing body’s code of conduct, as well as its investigations and disciplinary process. Ontario’s title protection initiative fundamentally bolsters the efforts of the Canadian Securities Administrators (“CSA”) in the implementation of the client-focused reforms.

We recommend that the Taskforce consider formally supporting the title protection initiative in its final report. Title protection can bring about meaningful gains in consumer protection in a short and actionable timeframe in a manner that is compatible with the Taskforce’s mandate.

¹ Advocis, Advocis Supports the Government of Ontario Taking Action on Title Protection (April 11, 2019) at: <https://myadvocis.ca/advocis-supports-taking-action-on-title-protection/>



In our view, title protection for financial advisors and financial planners should form a key part of any comprehensive plan to modernize Ontario's capital markets regulation.

(2) Support for the Cooperative Capital Markets Regulator

Advocis supports the transition to a Cooperative Capital Markets Regulator ("CCMR"). We view this transition as the path to creating much-needed harmonization and a strong national voice, characteristic of almost all leading securities markets.

With Ontario being a key CCMR jurisdiction, we urge the Taskforce to explicitly support the CCMR project in its final report. We recommend that the Taskforce urge the Ministry of Finance to: work with the participating provinces to resolve the remaining issues in the draft harmonized legislation; and continue extolling the benefits of the CCMR when engaging its counterparts from non-participating jurisdictions.

We believe that the time is right to move to a common securities regulator and for Ontario to continue taking a leadership role in this transition. Before producing its final report, we urge the Taskforce to consider whether any particular recommendation supports the development of the CCMR or hinders its development. Any changes to securities regulation that could impair the ability of the CCMR to come to fruition would weaken efforts to enhance Canada's financial services sector and the efficiency of its capital markets.

3. OUR COMMENTS ON THE CONSULTATION REPORT

Our specific comments on the Consultation Report are as follows. The numbering below reflects the numbering of the recommendations in the Consultation Report.

(1) Expand the mandate of the OSC to include fostering capital formation and competition in the markets

We support the Taskforce's proposal to expand the OSC's mandate beyond promoting investor protection, fostering efficient capital markets and contributing to financial stability to include specific mention of fostering capital formation and competition in the markets. We believe that the expansion of this mandate aligns with the Ontario Government's mantra of "Open for Business" and the goals outlined in the 2019 Ontario Budget. By fostering capital formation and competition, the OSC will be able to help businesses of all sizes to thrive, find creative solutions



to registrants' problems, increase economic growth and productivity, and promote capital markets that are more nimble and innovative.

We also support the Taskforce's view that expanding the OSC's mandate will be a timely response to COVID-19. Now more than ever, Ontario needs a proactive regulator that can bring the necessary changes to rebuild the economy.

(2) Separate regulatory and adjudicative functions at the OSC

Advocis supports a structure where the Chair and the CEO positions of the regulator are separate, to better distinguish the difference in responsibilities between these roles. This type of structure has been implemented by the recently-established Financial Services Regulatory Authority of Ontario ("FSRA") and the CCMR.

In regards to the adjudicative function, we believe that whether the tribunal is structured as a separate body or a division of the regulator, the key requirement is that the tribunal be allowed to operate on a basis that is effectively independent of the regulatory function, with a clear separation of staff involvement between those roles.

(3) Strengthen the SRO accountability framework through increased OSC oversight

In principle, we support strengthening SRO accountability through increased oversight of a senior regulator. However, we question whether the Taskforce's proposal will be workable with the British Columbia Securities Commission ("BCSC"), the present principal regulator of the Mutual Fund Dealers Association of Canada ("MFDA"). We submit that this proposal might not be welcomed or acceptable in the *current* SRO landscape.

The Taskforce's recommendations suggest giving the OSC veto powers on key SRO roles, including the Chair and the CEO of an SRO. Again, *vis-à-vis* the MFDA this may not be welcomed or acceptable to the BCSC. Senior regulators should continue to be focused on the overall direction and accountability of the SROs; while we understand the reasoning behind the veto of the Chair, we believe the selection of the SRO's executive-level staffing should remain a responsibility of the SRO's own board of directors.

Based on the current SRO regulatory structure, we believe that it makes more sense to renegotiate these accountability roles should an SRO merger take place (per recommendation 4 below). For this reason, we recommend that the Taskforce consider postponing this proposal or making it contingent on particular outcomes of the CSA's current review of the SRO structure.



(4) Move to a single SRO that covers all advisory firms, including investment dealers, mutual fund dealers, portfolio managers, exempt market dealers and scholarship plan dealers

Advocis believes that the modernization of financial services should include a thorough review of Canada's SROs. In our view, the regulatory framework for SROs is outdated and a review is long overdue. A streamlined and modern SRO regulatory framework would be more responsive to both investors and advisors, in addition to supporting a more innovative industry and reducing the regulatory burden. We support the CSA's current consultation and we applaud the Taskforce's highlighting of the urgency of this issue.

The current SRO structure is based on regulating products and does not reflect the reality of how modern consumers access advice and the centrality of the advisor-client relationship. This structure creates silos that make a financial product's sector of origin a defining characteristic of the consumer's experience, and the advice consumers receive is regulated as ancillary to the product sale.

Consumers have moved beyond a product-first mindset to an advice-first one: consumers seek holistic professional guidance on how to achieve their financial objectives, and the purchase of product can be part of the plan to achieve those objectives.

Based on the evolution in the role of financial advisors, we believe that as part of the SRO reform, regulators need to reconsider how financial advice is regulated. Advocis has long been advocating for financial advice and planning to be recognized as a true profession. We have argued that, given the holistic nature of modern advice, consumer standards and protections should not differ simply based on where a financial product originates.

There is no other profession where front-line members have such an impact on clients' lives while being treated as distribution conduits on the sales chain. For this reason, we believe that standards of advice must be elevated to make it a true profession, and those professionals should have a voice in how they are regulated.

(31) Create an Ontario Regulatory Sandbox in order to benefit entrepreneurs and start-ups. In the longer term, consider developing a Canadian Super Sandbox

Advocis supports initiatives that foster fintech development. Financial technologies are rapidly evolving and responding to changes in consumer appetites, aiming to provide the services that clients want, in the manner that they want them.

The OSC has identified the growing importance of the financial technology sector. The OSC's LaunchPad, for example, was created to help new fintech companies by supporting their navigation of the regulatory framework and by granting them flexibility on certain regulatory



obligations. Another example is the recent creation of the Office of Economic Growth and Innovation (“OEGI”) within the OSC. The OEGI’s mandate includes the oversight of the OSC LaunchPad, supporting innovation in capital markets, focusing on ensuring that the OSC receives balanced insights from all stakeholders and prioritizing the update of existing rules to reduce regulatory burden.

We believe that the creation of the LaunchPad and the OEGI are major accomplishments that demonstrate the OSC’s leadership in fintech and regtech innovation efforts in Canada. The OSC has already engaged in various international co-operation agreements to support innovative businesses, including agreements with the Australian Securities and Investments Commission,² the UK’s Financial Conduct Authority (“FCA”),³ the Abu Dhabi Global Market Financial Services Regulatory Authority,⁴ France’s Autorité des Marchés Financiers,⁵ and most recently with the Financial Supervisory Commission of Taiwan.⁶

In May 2020, the Canadian Council of Insurance Regulators (“CCIR”) and the Canadian Insurance Services Regulatory Organization (“CISRO”) announced the launch of the CCIR-CISRO Fintech/Insuretech Advisory Hub (“Advisory Hub”). The purpose of the Advisory Hub is to “serve as a portal for interested entities to seek and obtain clarification on what would be required to operate or provide their innovative insurance products or services... [but] will not offer pre-market testing, exemptive relief from regulatory/licensing requirements, financial support, or binding advice.”⁷

The OSC has clearly made significant progress in promoting the development of fintech companies and applications. We are concerned that having the OSC and FSRA, which is part of the CCIR, jointly undertake the Taskforce’s proposed Ontario Regulatory Sandbox could hinder the progress achieved under the OSC because of the constraints of the nascent Advisory Hub.

² Australian financial regulator and OSC sign agreement to support innovative businesses, at: https://www.osc.gov.on.ca/en/NewsEvents_nr_20161102_australian-financial-regulator-and-osc-sign-agreement.htm

³ Notice of Co-operation Agreement Concerning Innovative Fintech Businesses with the UK Financial Conduct Authority, at: https://www.osc.gov.on.ca/en/mou_20170222_agreement-innovative-fintech-businesses-uk.htm

⁴ Notice of Co-operation Agreement Concerning Innovative Fintech Businesses with the Abu Dhabi Global Market Financial Services Regulatory Authority, at: https://www.osc.gov.on.ca/documents/en/20171026_nca-services-regulatory-authority.pdf

⁵ Notice of Co-operation Agreement Concerning Innovative Fintech Businesses with the France Autorité des Marchés Financiers, at: https://www.osc.gov.on.ca/en/mou_20171026_nca-concerning-innovative-fintech.htm

⁶ Canadian securities regulators sign fintech co-operation agreement with the Financial Supervisory Commission of Taiwan, at: https://www.osc.gov.on.ca/en/NewsEvents_nr_20200611_sign-fintech-co-operation-agreement.htm

⁷ CCIR/CISRO Fintech Advisory Hub Communiqué, at: <https://www.ccir-ccra.org/Documents/View/3593>



As the Advisory Hub will not provide regulatory relief or access to real customers, but instead will act more as an information/touchpoint service, it is structurally limited and cannot support innovation in the way that OSC LaunchPad can. If FSRA is bound by its commitments to the Advisory Hub during its involvement with the Ontario Regulatory Sandbox, these commitments may hinder the ability of FSRA to be engaged in the manner that the Taskforce envisions.

Before finalizing this recommendation, we suggest that the Taskforce consider the implications of FSRA's participation in the Advisory Hub and whether an Ontario Regulatory Sandbox could put undue constraints on the OSC's work in this area.

(32) Requirement for market participants to provide open data

The Governments of Canada and Ontario have an opportunity to support fintech solutions for businesses and consumers through open data. Federal initiatives have included the appointment of an Advisory Committee on Open Banking (the "Committee") in 2018 and the 2019 consultations on the merits of open banking and its potential benefits. The Committee released a report on the findings of the first consultation in January 2020 and a second consultation is expected in the fall.⁸

Despite these efforts, Canada has generally lagged behind the rest of the world on fintech and open data initiatives. According to commentators, the main reasons for this include: the lack of consumer trust in a nascent industry; security concerns of sharing personal data digitally; and the current state of fintech regulation in Canada.⁹

In comparison, open data initiatives in other jurisdictions have been thriving. In the UK, the FCA has committed to exploring and implementing the use of technology and reviewing the effectiveness of Open Finance, a step up from their Open Banking initiative launched in January 2018.¹⁰ In 2009, the Unique Identification Authority of India was established to issue unique identification numbers, known as Aadhaar, to residents of India and to develop and operate a database for storing the information. The Aadhaar program has fostered financial inclusion,

⁸ The second round of consultations on open banking were expected in the spring of 2020, but due to the COVID-19 pandemic were delayed until "the fall at the earliest". The delay has disappointed some people, including Andrew Graham, founder and CEO of Toronto-based FinTech Borrowell, who said that Canada is already behind other countries and delaying the consultation will "just put us farther behind". <https://betakit.com/canadas-open-banking-consultations-delayed-until-fall-at-the-earliest/>

⁹ Kirkwood, Isabelle. "Lagging Regulation, Consumer Trust Inhibiting Fintech Adoption in Canada". Betakit. November 18, 2019. At <https://betakit.com/lagging-regulation-consumer-trust-inhibiting-fintech-adoption-in-canada/>

¹⁰ Since the launch of Open Banking in the UK, more than 135 entities have been approved by the FCA to offer Open Banking services.



eased access to information and improved mechanisms to fight financial crime and corruption. Singapore has had an active open data initiative for several years; its purpose has been to enhance transparency, increase public participation and enhance collaboration. Singapore's current open data portal supported the Smart Nation Vision initiative,¹¹ which debuted in 2017, and for which open data has been a necessary component.

These jurisdictions have been successful in their efforts because their governments and regulators have either led or been fully involved in and supported the implementation of these initiatives. Conversely, in Canada, market participants have not had the same incentives and support. For open data initiatives to be successful, we believe that governments and regulators must be fully engaged in the process.

In the UK, government has led initiatives on Open Banking, whereas in the US and Canada these initiatives are being led by industry. For example, in July 2020, it was announced that the big five banks are among 31 organizations participating in the launch of the Financial Data Exchange ("FDX")¹² in Canada. These organizations are committed to working together "to promote Open Banking through the development of a secure, common, interoperable, flexible and royalty-free industry standard for financial data sharing."¹³ We urge Canadian governments and regulators, including the OSC, to be engaged in these developments.

4. CONCLUSION

We thank the Taskforce for the opportunity to provide our comments on its Consultation Report and ask that it consider the recommendations we have put forward in this submission. In particular, we request that you consider our recommendations regarding the benefits of supporting the Government's initiative to regulate the titles of "financial advisor" and "financial planner", as well as explicitly stating your support for the CCMR project. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at jryu@advocis.ca.

¹¹ Smart Nation is a policy initiative guiding Singapore's digital transformation. This initiative harnesses technology, network and big data to create tech-enabled solutions to stay ahead as a global city and to improve lives and livelihoods.

¹² FDX is a US-based non-profit organization dedicated to developing an industry standard for data sharing. Initial members of the FDX Canada Working Group include Bank of Montreal, Capital One, CIBC, Desjardins, FinTech Growth Syndicate, Interac Corp., VISA, a number of major banks, among other groups.

¹³ Finextra, "Big Banks back Canadian launch of Financial Data Exchange". July 30, 2020. At: <https://www.finextra.com/newsarticle/36308/big-banks-back-canadian-launch-of-financial-data-exchange>



Sincerely,

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