

December 20, 2021

Kathryn Royal  
Manager, Strategic Planning and Reporting  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto ON, M5H 3S8

Sent via email: [kroyal@osc.gov.on.ca](mailto:kroyal@osc.gov.on.ca)

Dear Ms. Royal,

**Re: Request for Comments Regarding Statement of Priorities  
for Financial Year to End March 31, 2023**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regard to the Ontario Securities Commission's (the "OSC") proposed Statement of Priorities ("SoP") to inform its business planning for the 2022-2023 fiscal year.

## **1. ABOUT ADVOCIS**

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.

## **2. INTRODUCTION**

We congratulate the OSC for its continued timely response to the ongoing COVID-19 crisis. These are difficult times that have led to rapid changes in Ontario and Canada's economic landscape. We appreciate that the goal of reducing the regulatory burden has been integrated into the OSC's core operational work and policymaking activities. Aligned with this goal, we encourage the OSC to consider advisors to operate their businesses through a personal corporation. We believe that the year ahead is a key opportunity for the OSC to address



uncertainty regarding the implementation of the Client-focused Reforms (“CFRs”) and to enhance investor dispute resolution options. We look forward to engaging with the OSC on its research and innovation projects and to build a more efficient and level playing field for all market participants.

### **3. OUR COMMENTS**

We are pleased to share our comments on several initiatives in the proposed SoP. We look forward to continuing to engage with the OSC on these matters.

#### **3.1 Promote Confidence in Ontario’s Capital Markets**

##### ***Improving the Retail Investor Experience and Strengthening Protections***

Advocis supports initiatives that are aimed at protecting investors and improving their experience with Ontario’s capital markets. We congratulate the OSC and the Canadian Securities Administrators (the “CSA”) for the imminent launch of the new tools regarding Trusted Contact Persons (“TCP”) and Temporary Holds (“TH”) to address financial exploitation and diminished mental capacity in older and vulnerable clients.

The CFRs, which will be fully in force by the end of the year, are intended to better align registrants’ interests with those of their clients. While we support the objective of the CFRs, we remain concerned about how they will be interpreted. Regarding the new ‘best interest’ obligation, we caution that we must avoid an outcome where the question of compliance is distilled down primarily to cost, without a holistic evaluation of all factors in a client’s particular circumstances. The CFRs make tremendous sense in theory, but it is their application and interpretation that will determine the success or failure of this initiative.

Speaking of the interpretation of the CFRs, we understand that the OSC is in the midst of a review regarding how some firms have responded to the enhanced KYP obligations by reducing product shelf and restricting their offerings to proprietary products. We see this review as a positive and necessary development. We are ardent supporters of consumer choice and ensuring that consumers have access to a vibrant market which includes independent manufacturers, dealers and advisors.

We also encourage the OSC to consider the Title Protection framework that is being developed by the Financial Services Regulatory Authority of Ontario (the “FSRA”) and other provincial regulators such as Saskatchewan and New Brunswick. By restricting the use of the titles of ‘financial advisor’ and ‘financial planner’ to individuals with recognized credentials and oversight, unqualified individuals will no longer be able to hold themselves out using titles that the public relies upon. We strongly believe that this initiative will further enhance the



relationship disclosure aspect of the CFRs and offer additional clarity and protection to investors.

### ***Strengthening Dispute Resolution Services Such as OBSI***

We believe that investors should have access to efficient and fair dispute resolution services (“DRS”). In improving the DRS options for investors, we encourage the OSC to be cognizant of the recommendations laid out in the Ontario Capital Markets Modernization Taskforce’s (the “Taskforce”) final report.<sup>1</sup>

The Taskforce recommended that for OBSI to be given the power to issue binding decisions, new requirements must be implemented to enhance its governance structure, public transparency, and professionalism.<sup>2</sup> Advocis, along with other stakeholders, also expects that any DRS with the authority to issue binding decisions would have an effective appeals mechanism along with an enhanced ability to deal with complex capital markets matters.

### ***Continue Efforts to Implement a New Single Enhanced SRO***

Advocis supports the work of the OSC in establishing a single national Self-Regulatory Organization (“SRO”). Amid the changes accelerated by the global pandemic and digitization in the investment industry, a consolidated SRO is a welcome change for investors who require a responsive and proportionate regulatory framework to address their needs. A single national SRO also provides a great opportunity to level the playing field for stakeholders both large and small, and from across Canada.

In establishing how the new SRO will deal with distribution matters, we encourage the OSC to be cognizant of the difference between ‘access to product’ and ‘access to advice’. Financial advice is not simply about transacting in product but more importantly, it is about understanding the client’s financial goals and developing strategies for achieving them. Ultimately, investors gain more value from having access to an advisor’s professional skills and coaching than having mere access to a financial product.

We also believe that the current focus on product-based regulation limits the accessibility of financial advice to investors. This mindset can hinder innovation and efficient investor protection. We continue to advocate for a regulatory framework that takes a client-centric approach and moves away from a product-based focus. While the SRO model can thrive in regulating dealer-members and product distribution, it is not attuned to consumers’ modern expectations about the professional advisory relationship.

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<sup>1</sup> Ontario Capital Markets Modernization Taskforce, “Final Report” (January 2021). At: [files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf](https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf)

<sup>2</sup> *Ibid* at 106.



### ***Developing a Rule Setting out Climate Change related Disclosure for Reporting Issuers***

We congratulate the OSC, along with its peers at the CSA, for stepping forward in proposing standardized rules and guidelines related to environmental, social and governance (“ESG”) disclosure for issuers. With the rapid growth in ESG investing, there is a pressing need for a consistent disclosure regime to enable investors to make informed decisions with respect to their investments that are aligned with their values. For instance, the lack of a mandatory disclosure framework has resulted in one third of Canada’s publicly traded companies withholding disclosure of their greenhouse gas emissions.<sup>3</sup>

While the proposed National Instrument 51-107 *Disclosure of Climate Related Matters* is a step in the right direction, the disclosure requirements are not applicable to investment funds. In many cases, investment funds are the entry point for retail investors into the capital markets. In harmonizing the regulatory framework with respect to ESG disclosure, we encourage the OSC to address this regulatory gap and to develop ESG guidelines applicable to investment funds.

### ***Expanding Behavioural Insights and Policy Testing Capabilities***

We support the OSC Investor Office expanding its capacity to apply behavioural insights to securities regulation. Understanding and applying behavioural insights can enhance the effectiveness of investor protection. For example, these insights can assist with designing initiatives that encompass a more holistic understanding of how investors make decisions. They can also help regulators to better identify, analyze, and respond to challenges that investors face in the capital markets.

The Investor Office can benefit from engaging with consumer-facing stakeholders to achieve their goal of better understanding the underlying behavioural insights at play in the capital markets. Financial advisors act as intermediaries who work directly with consumers. As a result, advisors have a unique perspective to share about how clients make investment-related decisions. They can also draw on their experiences to provide insights on, and testing opportunities for, a variety of behavioural concepts such as choice architecture, framing effects and cognitive biases. We would welcome further opportunities to collaborate with the Investor Office on research projects and initiatives.

### ***Developing Total Cost Reporting Disclosure for Investors***

We commend regulators from both the securities and insurance sectors for committing to harmonize the cost disclosure investors receive for both investment funds and segregated funds and move to a full-cost disclosure model in lockstep. Enhancing disclosure enables consumers to make better and more informed decisions with respect to their investments so

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<sup>3</sup> The Institute for Sustainable Finance, “With increased global demands for climate data, new research shows corporate Canada must step up its game” (April 8, 2021). At. [smith.queensu.ca/centres/isf/news/tsx-emitters-report.php](https://smith.queensu.ca/centres/isf/news/tsx-emitters-report.php)



they can compare, from their perspective, reasonably like products across as many key factors as possible.

We believe that financial advisors can serve a key role in communicating the changes to cost reporting to consumers and we would be pleased to assist in that financial literacy strategy.

### **3.2 Modernizing the Regulatory Environment**

#### ***Advisor Incorporation***

We believe that the modernization of Ontario’s legislative and regulatory framework, along with the consolidation of the SROs, provides a unique opportunity for Ontario and the OSC to bring about advisor incorporation.

Incorporation is an efficient business structure that is widely used by other Ontario professionals such as lawyers, accountants and real estate agents. Amongst securities registrants, many are dual-licensed as life insurance agents who are already able to incorporate for that line of business. The Mutual Fund Dealers Association of Canada (“MFDA”) allows its Approved Persons to direct commissions to a personal corporation in most jurisdictions;<sup>4</sup> to our knowledge, there is no evidence of consumer harm caused by this structure. Making an incorporation model available to registrants of both mutual fund dealers and investment dealers would help level the playing field between financial sectors and between professions.

As part of Ontario’s consultation for its proposed *Capital Markets Act*, we are asking the Government to consider a full incorporation model. A directed commissions model would be an alternative option that would be under the purview of the new SRO. As the OSC is a major stakeholder that is very influential in this discussion, we would be pleased to engage further on this issue.

#### ***Outside Activity Reporting***

As part of its efforts to reduce the regulatory burden, we appreciate the regulators’ continued focus on modernizing standards with respect to outside activity reporting. We thank the CSA for its recent release of amendments to National Instrument 33-109 *Registration Information* on December 16. We are eagerly reviewing it and look forward to continued discussions with regulators on this matter.

### **3.3 Facilitate Financial Innovation**

We support the OSC’s continued efforts in advancing innovation in Ontario’s capital markets. We would like to take this opportunity to introduce Advocis’ Technology and Innovation

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<sup>4</sup> MFDA Staff Notice MSN-0072 (March 29, 2010): <https://mfda.ca/notice/msn-0072/>



Committee (“TIC”). The TIC is composed of tech-forward members of Advocis who engage with modern tools and technologies to enhance their ability to provide customer-focused financial advice. The TIC’s initiatives complement our advocacy efforts for a better regulatory environment as we believe that both investors and financial service providers can benefit from technologies that promote greater access to financial advice, increased choice in services, and a more competitive landscape.

The TIC is currently working on an initiative whereby advisors would have the opportunity to meet with innovators and test the offerings of beta stage start-ups, which would ensure that the voices of consumers and advisors are heard by developers in the fintech space. We believe that the volunteer members recruited by the TIC would be complementary to the OSC’s TestLab efforts. Namely, we could help TestLab-participating fintechs connect with their potential user base and receive feedback from client-facing, front-line advisors.

#### 4. **CONCLUSION**

We appreciate this opportunity to provide our comments on the OSC’s proposed SoP. Ontario’s capital markets infrastructure is on the cusp of tremendous change: a new *Capital Markets Act*, a new SRO, and major changes to the OSC itself based on the recommendations of the Taskforce. The proposed SoP positions the OSC well to rise to these challenges.

By representing front-line, client-facing advisors, we believe that we can provide tremendous insight on the retail investor’s experience, and we would be pleased to work closely with the OSC on the matters we have highlighted above. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at [jryu@advocis.ca](mailto:jryu@advocis.ca).

Sincerely,

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

Rob Eby, CFP, RRC  
Chair, National Board of Directors