



Advocis
390 Queens Quay West, Suite 209
Toronto, ON M5V 3A2
T 416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

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The Honourable Charles Sousa
Minister of Finance
c/o Budget Secretariat
Frost Building North, 3rd Floor
95 Grosvenor Street
Toronto, ON M7A 1Z1

Sent via email to: submissions@ontario.ca

Dear Minister,

Re: 2017 Pre-Budget Consultations

Advocis, The Financial Advisors Association of Canada, is pleased to provide comments on Ontario's 2017 Pre-Budget Consultations.

I. About Advocis

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 12,000 members organized in 40 chapters across the country, are licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

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

II. Introduction

We congratulate the Government of Ontario for its leadership in reviewing the regulatory structure for the provision of financial advice. The establishment of the *Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives* (Expert Committee) in conjunction with the Expert Panel to *Review the Mandates of the Financial Services Commission of Ontario (FSCO), Financial Services Tribunal and the Deposit Insurance Corporation of Ontario*, has demonstrated the government's commitment to seeking effective and efficient solutions to the regulation of financial advisors and planners. However, we are concerned that this broader review is being prejudged by the Ontario Securities Commission (OSC), as the regulator is promoting National Instruments, and Mutual Fund Dealers Association of Canada (MFDA) initiatives, that are usurping the overarching policy of the elected government. **It is imperative that the government and the Ministry of Finance be allowed to complete their review and direct the regulators to ensure that regulatory policy initiatives are consistent with that of the elected government.**

Indeed, changes must take place in order to reform an outdated and limited product-based regulatory model that continues to add regulations onto the delivery of financial advice. "Another way to appreciate the limitations of product-based regulation is to consider what it does not do. Most significantly, it does not concern itself with advice. Most advice provided to investors is treated as secondary or incidental to the trade, and therefore remains exempt from any clear, concrete standards."¹ According to the OSC's own Fair Dealing Model "an industry that is no longer product-based becomes problematic, in a way, for product-based SROs."² Regulatory focus on product regulation rather than on the provision of financial advice and planning is ineffective and inefficient. The continued attempts to further regulate the client/advisor relationship by regulators who do not consider financial advisors and planners as members of their regulatory organizations, or that do not allow them to be part of the policy decision-making process, is unfair and undemocratic. Consistent with what the Auditor General stated in her 2014 report to the government, "Modern financial services regulation calls for a holistic view of the financial services rather than a siloed approach."³ A holistic approach that will modernize financial services in Ontario – and Canada – can only be accomplished if the mandates of both insurance and securities regulators are fully reviewed. The current proposals being put forward by the OSC are based on an outdated model, which has resulted in a dysfunctional relationship between financial advisors and planners (the regulated) and the regulators – to the detriment of consumers and business.

III. Ontario Securities Commission Review

As a result of our concerns regarding the scope of the policy changes being considered by the OSC, in addition to the plethora of unanswered questions and uncertainties raised in National Instrument 81-408 *Consultation on the Option of Discontinuing Embedded Commissions* and National Instrument 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives toward their Clients*, and the absence of compelling research, we call on the government to take the following steps:

¹ Ontario Securities Commission, The Fair Dealing Model (January 2004).
http://www.osc.gov.on.ca/documents/en/SecuritiesCategory3/cp_33-901_20040129_fdm.pdf.

² Ibid.

³ 2014 Auditor General Report. Office of the Auditor General of Ontario.
<http://www.auditor.on.ca/en/content/annualreports/arreports/en14/303en14.pdf>

- 1) conduct an immediate review of the OSC's and Self-Regulatory Organizations' (SROs) role and mandate with respect to the oversight of financial advisors and planners;
- 2) require that any changes being considered in the review of NI 81-408 *Consultation on the Option of Discontinuing Embedded Commissions* and NI 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives toward their Clients* be brought to a vote in the Ontario Legislature; and
- 3) re-introduce Bill 157, *Financial Advisors Act*, or equivalent legislation.

Reforms of this importance must not reside with regulators and SROs that do not view and consider financial advisors as members of their regulatory bodies. Regulating financial advisors without representation is harmful to the Ontario economy, financial advisors and small businesses, consumers and broader government policy.

While Advocis continues to support the OSC's mandate to protect investors from unfair, improper and fraudulent practices, and preserve the integrity and efficiency of capital markets, we believe that the OSC should not be responsible for the day-to-day oversight of financial advisor conduct and the advisor/client relationship. We are of the opinion that the best approach is to establish a profession of financial advisors and planners, as proposed in Bill 157, *Financial Advisors Act, 2014*, and which received unanimous three-party support when brought to a vote in the Ontario Legislature, but died on the order table due to the call for the last provincial election.

IV. Regulation without Representation

Financial services regulation has become more complex and confusing. The Ontario government's current red-tape review is an example of how complex the regulation of financial advice and planning has become. Specifically, in the Red Tape Challenge, Ministers Charles Sousa and Brad Duguid are calling for comments on the regulation of financial services. But within the same consultation it is noted that Ontario's securities regulations are not part of this review. It is impossible to talk about reform within the financial services sector if securities are excluded. Such a conversation implicitly supports a product-based approach to the regulation of financial services, and ignores the cross-sectoral, holistic approach to the provision of financial services. Until the government recognizes this reality we will continue to see financial advisors, and planners and their clients burdened by additional red-tape.

In the 2014 Annual Ontario Auditor General Report, it was recommended that "To ensure that regulatory processes exist commensurate with the size and maturity of the industries, the Financial Services Commission of Ontario (FSCO) should explore opportunities to transfer more responsibility for protecting the public interest and enhancing public confidence to new or established self-governing industry associations."⁴ The Report also presented the MFDA and the Investment Industry Regulatory Organization of Canada (IIROC) as examples of self-governing associations; however, the MFDA and IIROC were created to regulate Brokers and Dealers, not the individual advisors. Specialized SROs that were created to regulate Brokers and Dealers, and that do not consider financial advisors and planners among their members, sets financial advisors and planners apart from the overall structure and decision making process. An organization that regulates financial advisors and planners, but does not consider them as members and part of

⁴ Ibid.

the policy decision-making process, should not be deemed a specialized SRO for financial advisors and planners.

Under the current regulatory environment, financial advisors and planners are being regulated without representation. This is why Advocis has long advocated that the regulation of all financial advisors and planners be delegated to a self-governing profession of financial advisors and planners, similar to the law and the accounting professions. Financial advisors and planners need to be part of the decision-making process of their profession and be granted the right to self-regulate.

Advocis remains committed to a profession of financial advisors and planners, consistent with what the Ontario Legislature supported in Bill 157. The oversight of the advisor/client relationship and advisor conduct should fall within one regulator that recognizes financial advisors and planners as their members. A self-regulatory model would replace all existing regulators at the advisor/client level with an oversight body that would have the specialized knowledge and understanding necessary for the proper regulation of financial advisors and planners. This would ensure consumer protection, reduce red tape, improve market efficiency, and a better outcome for the financial advice industry.

Conclusion

To ensure a holistic approach to the regulation of financial advisors and planners, Advocis recommends that, as with FSCO, the government of Ontario carry out an immediate review of the OSC's role and mandate in overseeing financial advisors and planners, that any major policy changes impacting the delivery of financial advice and planning be brought forward to the Ontario Legislature for a vote, and that government re-introduce Bill 157, or equivalent legislation, to ensure that financial advisors and planners are members with representation in the bodies that regulate them. Our recommendations will allow government to develop fair and proper financial services policies, reduce red-tape, and will ensure that consumers are well protected and continue to have choice and access to professional financial advice.

We look forward to working with the Government of Ontario on the regulation of financial advisors and planners. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,



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



Wade Baldwin, CFP
Chair, National Board of Directors