



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

May 30, 2014

VIA COURIER AND EMAIL: priorities@fSCO.gov.on.ca

Philip Howell
Chief Executive Officer and Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, ON M2N 6L9

Dear Mr. Howell:

**Re: Financial Services Commission of Ontario
Draft Statement of Priorities for 2014**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial Services Commission of Ontario ("FSCO") in regards to its draft statement of priorities for 2014 (the "Draft SOP").

A. 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 11,000 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 our published Code of Professional 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 with individual Canadians on financial matters than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

B. Comments on 2014 FSCO Initiatives

We would like to provide comments on the following initiatives in the Draft SOP. For convenience, the numbering below reflects that used by FSCO.

1.4 Conduct life insurance and mortgage broker product suitability reviews.

We look forward to continuing our work with FSCO as it undertakes product suitability reviews of life insurance products, and as it assesses how life agents respond to the financial literacy needs of their clients through the provision of advice. We have found our meetings to date laying out the groundwork for this review, involving FSCO representatives, Advocis staff and member advisors, to be very productive.

Key questions the review should address include determining (i) the level of product knowledge possessed by the average consumer and whether there are barriers to obtaining information; (ii) how best to address information deficits to improve consumer decisions, whether through written disclosure, professional advice, public education initiatives or otherwise; and (iii) whether advisors are asking the right probing questions to understand the client's financial needs and objectives.

FSCO's consultative process exemplifies its commitment to engaging stakeholders to better understand the consumer's experience and the industry's approach to serving clients. We would be pleased to offer our continued experience and expertise as the review unfolds.

3.3 Promote consumer access to financial literacy information.

We support FSCO's initiative to promote access to educational materials to bolster the public's financial literacy. As you are aware, levels of financial literacy amongst Ontario's consumers are disconcertingly low, which is especially problematic at a time when governments, facing their own fiscal challenges, are expecting the public to be increasingly self-reliant in regards to their finances.

Advocis believes that financial advisors can play a key role in improving financial literacy levels, as advisors are on the front line of the financial services industry and serve the public directly on a daily basis. Professional financial advisors are the best source of financial information for Canadians, having the knowledge and ability to explain complex financial concepts to clients on a one-to-one basis. After all, the best educational materials are of little value if they are not read or understood by their intended audience; advisors can explain these matters in an interactive manner that promotes the consumer's deeper understanding.

To improve the financial literacy of Ontarians, FSCO should promote an active role for professional financial advisors as a conduit to deliver the information consumers need. This includes conveying the value of financial advice to consumers and educating the public on what it should look for when selecting a financial advisor and how to get the most out of that relationship by outlining the responsibilities of both parties. Advocis would be pleased to work with FSCO in helping to shape this framework.

4.1 Develop a harmonized national life agent licence qualification standard.

Advocis has been an active participant throughout the discussions with the Canadian Insurance Services Regulatory Organizations on the plans for a harmonized LLQP. There are many aspects of the existing LLQP that were in need of review and we are pleased that FSCO is working collaboratively with CISRO and the CCIR to develop updated and harmonized standards to the life licensing regime.

We continue to remain steadfast in our concern that the final form of the harmonized LLQP not be a barrier to new entrants to the career: cost and access should remain consistent with what is experienced today. As an approved course provider, Advocis still feels strongly that CISRO's and the CCIR's intended result could be best achieved through the development of a detailed syllabus, course standards and a mandatory glossary that all providers would be required to utilize in their curriculum. We urge FSCO to consider this approach now before more scarce regulatory resources are put into the re-development of actual course content.

C. Comments on Highlights from 2013-14

Improved disciplinary model to regulate insurance agents/adjusters.

In September 2013, we responded to FSCO's consultation regarding the modernization of disciplinary hearings for insurance agents and adjusters, voicing our general support for FSCO's intention to replace advisory board ("AB") hearings with the Financial Services Tribunal ("FST"). As part of this implementation, however, we emphasized the importance of maintaining advisor representation on adjudicative panels. As we stated in our submission:

Moving ... to the FST raises the spectre that a disciplinary action involving an insurance agent could be heard by a panel of adjudicators who have no knowledge of what it is like to be an agent in the industry. We believe that this is fundamentally unjust: in any disciplinary hearing, an accused should be judged by his or her peers. This is particularly the case when the outcome can bring about severe consequences for the accused, including loss of livelihood if a license is suspended or revoked. To not provide for peer review raises the possibility that the accused will suffer injustice due to the adjudicator simply not understanding the industry or the accused's actions within it. This problem is exacerbated if an FST panel consists of only one adjudicator, as it concentrates all decision making power within one person, who may not have the requisite industry knowledge to make an informed decision.

We also expressed concerns that FST proceedings could be much more costly to contest, relative to the existing AB process, given its more formal nature and the FST's discretionary power to order the payment of costs. We would appreciate hearing FSCO's view on these specific matters.

Beyond this step towards modernization, we believe that the disciplinary model for *all* financial advisors requires more fundamental change: even if FSCO develops the most effective disciplinary process possible, consumers would still be exposed because that process would only apply to actors within FSCO's jurisdiction. The reality is that many Ontarians work with advisors who are dual-licensed to work in both the insurance and mutual fund/securities sectors. This is generally beneficial for consumers, as most require a combination of insurance and securities products in their comprehensive financial plans. Dual-licensing provides the consumer with the convenience of "one stop" shopping and provides the advisor with a more holistic view of the client's financial situation.

If an advisor commits misconduct in the insurance sector and receives a serious sanction to protect the public from that advisor's further misdeeds, such as a license suspension, that same actor should not be able to continue operating unimpeded in a parallel sector, beyond FSCO's reach. But unfortunately, this can occur due to the current nature of Ontario's fractured regulatory system.

The Solution: Advocis' Professions Model

We have advocated for a practical solution to this glaring problem since February 2013: our Professions Model would require that all persons who are in the business of providing financial advice or planning to retail consumers belong to an accredited professional association and maintain such membership in good standing. Membership would entail commitment to a Code of Ethics, enhanced proficiency and continuing education requirements and a complaints and disciplinary process that empowers the association to suspend or cancel the advisor's membership. This would be in stark contrast to the *status quo*, where anyone can call himself a financial advisor, regardless of education, training or experience.

The Professions Model focuses on the advisor's relationship with the client, regardless of product sector. In the scenario above, when the advisor's license is suspended in the insurance sector, his or her membership in the professional association would automatically cease to be in good standing and as a result, the advisor would no longer be permitted to continue operating in the mutual funds sector for the duration of the suspension. This would create a comprehensive disciplinary umbrella that makes sanctions substantively more effective at achieving their goal of protecting the consumer.



The Professions Model would raise the bar for *all* financial advisors, represented by the outer circle in the diagram at left, by creating strong industry-wide baseline standards; it would also allow for further specialization in the industry, such as in financial planning, wealth management or estate planning, represented by the inner circles.

This "baseline proficiency with specializations" structure is analogous to that used in the medical field. To visualize this, the outer circle of all financial advisors can be replaced with the rigorous but baseline MD degree that all doctors must first achieve. Then, certain doctors may choose to specialize further, replacing the CLU, CFP and CH.F.C. inner circles with oncologist, cardiologist, and endocrinologist.

Some stakeholders in the financial services industry have argued that only the specializations should be regulated – but consider the potential impact on the public if this approach had been adopted in the medical field and anyone could claim to be a medical doctor without having appropriate levels of knowledge and training. This would clearly be an unacceptable outcome, jeopardizing the public's health, and we believe that this is similarly unacceptable when it comes to consumers' financial health. The Professions Model would create strong and enforceable standards for all financial advisors, whether generalists or specialists, ensuring that whomever the public deals with is a duly-qualified practitioner that is committed to professionalism.

The Professions Model is multifaceted, with benefits to consumers, advisors, regulators and product providers alike, and it began to come to fruition with the introduction of Bill 157, *The Financial Advisors Act, 2014* in February. With the provincial election called in May, progress on this iteration of the bill was halted; however, the principles underpinning the bill have garnered multi-party support and we expect it to be reintroduced following the election.

A critical factor to the bill's passage will be the support from key stakeholders, including FSCO. We would be pleased to meet with you to discuss our Professions Model in detail, address any concerns that you may have, and to work alongside FSCO in integrating the Professions Model as a key step in improving the disciplinary process for financial advisors.

Financial hardship unlocking process streamlined.

While the very nature of pension accounts requires that they should not normally be drawn upon until retirement, Advocis has previously expressed its support for pension unlocking in circumstances that meet specific criteria, such as when the contributor has reason to believe he or she faces a considerably reduced life expectancy. We have also expressed our support for changes that would remove the requirement to obtain the Superintendent's consent to unlock these funds.

We applaud FSCO for working with the Ministry of Finance to implement administrative changes to the hardship unlocking program that put greater responsibility on financial institutions. These changes will allow for a more streamlined process for applicants whose situations merit the unlocking of retirement accounts.

One-window access provided to national insurance enforcement data.

We view the Canadian Insurance Regulators Disciplinary Actions ("CIRDA") database as a step forward in consumer protection; by developing this national database of insurance-sector disciplinary actions, FSCO and its colleagues are correctly recognizing that advisors, like many professionals, are increasingly working across provincial boundaries, and consumers should not have to search fragmented databases to gain a complete picture of their advisor's disciplinary history. But to truly protect consumers, this effort must go even further.

As discussed above, many advisors are dual-licensed, but CIRDA only captures disciplinary history in the insurance sector. We believe that the most serious acts of advisor misconduct, such as fraud or gross negligence, are not sector-specific concerns but speak to the advisor's conduct more generally.

One of the key aspects of our Professions Model addresses this problem by capturing all financial advisors in a comprehensive publicly-accessible database. By focusing on the substance of the activity (financial advice and planning) rather than the product sector in which it occurred (such as insurance or mutual funds), consumers would be better protected as they would only need to access one central database to view their advisor's complete disciplinary history. We believe this enhancement is sensible and urgently needed, and the Professions Model would make this a reality. We would be pleased to meet and discuss the merits of the Professions Model in greater detail.

Advocis looks forward to working with FSCO as it implements the objectives identified in the Draft SOP for the coming year and beyond. We would be pleased to address any concerns or questions that FSCO may have; please contact the undersigned or Ed Skwarek, Vice President, Regulatory and Public Affairs, at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,

A handwritten signature in black ink, appearing to be 'GP' followed by a long horizontal stroke.

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

A handwritten signature in black ink, appearing to be 'H Lockhart'.

Harley Lockhart, CLU, CH.F.C.
Chair, National Board of Directors