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December 15, 2011

RDSP Review
Tax Policy Branch
Department of Finance
L'Esplanade Laurier
16th Floor, East Tower
140 O'Connor Street
Ottawa, Canada K1A 0G5
Dear Sirs / Mesdames,

Re: Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans

We are writing on behalf of The Financial Advisors Association of Canada (TFAAC) and the Conference for Advanced Life Underwriting (CALU), in response to the Department of Finance Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans.

Advocis is the trade name for TFAAC. Advocis is the largest and oldest voluntary professional membership association of financial advisors in Canada. Our members are independent owners and operators of small businesses and sales representatives of medium- and large-size financial services companies, who provide comprehensive financial planning and investment advice, retirement and estate planning, and employee benefit plans. Our members offer clients a prudent long-term perspective on managing a wide array of financial risks and meeting long-term financial goals. Our members are typically dual-licensed to provide life and health insurance as well as mutual funds and securities.

CALU was formed to meet the needs of Advocis members who specialize in advanced applications of life insurance and related financial services, including such areas as employee benefits, wealth accumulation, retirement planning, estate planning and business succession planning.

Our comments:

We have set out below in bold type, some of the questions that are posed in the Consultation document, followed by our comments.

Are existing parameters effective in supporting the objectives of the RDSP?
Are there aspects of these parameters that could be improved?

The goal of the RDSP program, to promote the long-term financial security of children and adults with severe disabilities, is laudable.

The lifetime financial needs of individuals who are so disabled as to be eligible for the Disability Tax Credit (DTC) are substantial. Such individuals typically have limited ability to generate income during their lifetime, and are much more dependent on family and on the state than most of their fellow Canadians. Their long-term financial security is precarious. These individuals and their supporting family members often struggle financially to meet their ongoing needs, and RDSPs offer a way to increase their long-term savings.

The lifetime maximum amount of $200,000 (potentially increasing to a maximum of $270,000 for lower-income families that receive grants and bonds) that may be contributed to an RDSP does not appear to be very substantial, when one thinks of the long-term financial needs of someone who is severely disabled and not able to generate income. Even if parents are able to contribute the maximum amount to an RDSP for a child over a short period of time to maximize growth on accumulations, the total amounts that are likely to be accumulated will not be large in relation to the child's long-term needs.

We believe the lifetime maximum amount should be increased to at least take into account the future impact of inflation. We acknowledge that increasing the contribution ceiling could give rise to concerns about equity. Families of beneficiaries that are relatively wealthy would be in a better position than less wealthy families to contribute and to generate tax-free investment income for the beneficiary. However, this is to some extent counter-balanced by the enhancements available to lower-income families through the RDSP grant and bond formulas.

Are the general rules related to establishing RDSPs working well? Do beneficiaries and their families face obstacles in establishing RDSPs, and if so, how could these obstacles be overcome?

It appears that fewer Canadians than the government of Canada expected have taken advantage of the opportunity to establish RDSPs. In a recent editorial titled "Sign up for the best government program in Canada", the Globe and Mail, (October 30, 2011) noted that: "... disabled people are not emptying the Treasury. One poll found that nearly half of disabled Canadians hadn't even heard of it. The program was launched on Dec. 3, 2008, and today 48,000 people are enrolled – far fewer than the 500,000 that the government expects, at a cost of $200-million a year."

Thus it seems that one may say that the general rules related to establishing RDSPs are not working well enough.

We believe that obstacles to the take-up of RDSPs include the following:

- As far as we are aware RDSPs are mainly available through chartered banks, and not available through a wide range of channels in the financial industry;
- The setting up of an RDSP can involve legal and administrative complexity, that may deter potential sponsors (i.e., typically families of beneficiaries);
- Financial institutions may be deterred from developing RDSP products because they are costly to develop and are a "one off" financial product, that has a limited market and offers limited incentives to financial intermediaries and financial advisors; and
- Financial advisors are not sufficiently informed about RDSPs.

We believe that some of these obstacles to the take-up of RDSPs might be addressed by the following measures:

- By broadening the number of distribution channels for RDSPs;
- By encouraging financial institutions to devote more resources to marketing RDSP products and educating financial advisors and others about those products, as a matter of corporate social responsibility;
- By making a concerted effort to simplify the process of establishing RDSPs, both at the government level and on the part of financial institutions that deliver RDSPs;
- By promoting the education of financial advisors with regard to RDSPs including expansion of information on the Government of Canada and related provincial websites;
- By engaging relevant stakeholders, including federal and provincial government departments and agencies whose mandate includes support for persons with disabilities, charities and advocacy organizations, in order to inform them about RDSPs and enable them to promote the use of RDSPs among their constituencies; and
- By specifically targeting and educating individuals who qualify for the disability tax credit as well as their families on the benefits of opening an RDSP.

We also believe it would be consistent with the public interest in promoting long-term financial security for individuals who have a severe and prolonged impairment in physical or mental functions, for the Government to consider developing appropriate programs to encourage financial institutions to develop and offer RDSP products, and to encourage professional financial advisors to help consumers to take advantage of the opportunity to establish RDSPs. This could include sponsorship of regional information sessions focused on financial institutions, financial advisors and organizations involved in supporting and/or counseling disabled persons.

One specific obstacle to setting up RDSPs that has been brought to our attention concerns the treatment of contributions, in circumstances where a plan beneficiary is not competent to make a will and dies intestate. In some cases individuals are reluctant to make contributions to an RDSP, because in the event that the beneficiary dies intestate, their contributions may not be returned to them. This concern might be resolved if the rules were similar to those that apply to RESPs, which provide for a return of RDSP contributions to the person that made the contribution on the termination of the plan or death of the plan beneficiary.

In particular, what is the appropriate approach to addressing legal representation issues? What elements would need to be part of a solution that would meet the needs of beneficiaries and their families, as well as the needs of RDSP providers?

The consultation document notes: "Some provinces, such as British Columbia, have instituted more streamlined processes to allow for the appointment of a trusted person, such as a parent or friend, to manage resources on behalf of a disabled individual. The Government of Canada has encouraged other provinces and territories to determine whether such streamlined processes would be appropriate for their jurisdiction."

We applaud the Government of Canada's efforts to encourage more streamlined processes.

We believe it would simplify the process of establishing an RDSP, if financial institutions were permitted to establish an RDSP without having to require designated individuals – including parents, spouses, siblings and grandparents – to obtain and produce a formal guardianship order.

Would it be appropriate to accommodate rollovers from RESPs to RDSPs? If so, how could a rollover be consistent with the objectives of both plans, while still being responsive to changes in individual circumstances?

While we are inclined to support the idea of permitting rollovers, we believe the government would need to consider whether RESP grants would have to be repaid prior to the transfer.

We understand that there could be an equity issue in permitting rollovers from RESPs to RDSPs without requiring repayment of RESP grants. RESPs are required to be used for educational purposes as specified in the applicable legislation, and are subject to clawback of grants if not used for the specified purposes. The result of permitting rollover of RESPs without a clawback would be to confer a benefit on individuals who roll an RESP into an RDSP that is not available to all RDSP sponsors.

What should happen to an RDSP when a beneficiary ceases to be eligible for the DTC (particularly if there is a medical likelihood that the beneficiary would be eligible for the DTC in the foreseeable future)? Are changes needed to provide greater flexibility in these circumstances?

We presume that some proportion of the individuals, who cease to be eligible for the Disability Tax Credit (DTC) because they no longer have a severe and prolonged impairment, will subsequently become eligible again. We would therefore be in favor of deferring the wind-up of an RDSP, where the beneficiary has ceased to be eligible for the DTC, for a period of at least two years to accommodate these situations. We also would favour permitting an RDSP to continue for a further two years in circumstances where a medical certificate attests to a medical likelihood that the beneficiary will become eligible for the DTC again in the foreseeable future.

Advocis appreciates this opportunity to respond to the Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans and would be pleased to address any concerns or answer any questions. Please feel free 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

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Chair, National Board of Directors