

**Submission to the
Standing Committee on Government Agencies
of the Legislative Assembly of Ontario
Regarding its Review of the
Ontario Securities Commission**

February 23, 2009





Kris Birchard, Chair of the National Board, Advocis:

Introduction:

Good afternoon. My name is Kris Birchard. I am Chair of the Board of Advocis, The Financial Advisors Association of Canada.

As Chair of Advocis, I am a volunteer. When not fulfilling my duties as Chair, I am serving clients in private practice as a financial advisor.

With me today is Greg Pollock, Advocis' President and Chief Executive Officer, and Peter Tzanetakakis, Senior Director of Regulatory Affairs.

I will speak first, Greg Pollock will speak next, and we will leave time for questions.

We would like to thank the Standing Committee on Government Agencies for this opportunity to appear, and to address the Committee with regard to its review of the operation of the Ontario Securities Commission.

An important task of the Standing Committee is to consider the big picture regarding the OSC's role in regulating the capital markets and its intermediaries and protecting investors.

Is the OSC effective in accomplishing those objectives?

Does the OSC need more focused direction from the government in order to achieve its objectives?

At its root, the purpose of the OSC and its role in overseeing subordinate self regulatory organizations – the SROs, namely the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC) – is to protect investors and ensure confidence and continued health of the capital markets. The role of the OSC is to ensure that Ontario and Canada have fair, efficient and competitive capital markets and provide a sound environment for savings and investment. This supports growth and efficiency in the Ontario economy.

I would like to begin by briefly describing Advocis and its members.

We are the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our association was founded in 1906, as the Life Underwriters Association of Canada.



We have more than ten thousand members across Canada, five thousand of them in Ontario. Our members are primarily independently contracted to provide financial products and services on a planning platform.

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 more than a million Ontario households and businesses.

Our members are provincially licensed to sell life and health insurance, mutual funds and other securities. They are primarily owners and operators of their own small businesses, who create thousands of jobs across the province.

Ordinary Ontarians, in all walks of life, need financial advice, to help them to save and invest and plan for the future. Advocis financial advisors maintain lasting relationships with their clients based on trust. They take a long-term planning perspective and are helping to guide clients, young and old, individuals, families and businesses, especially during these times of economic uncertainty and financial market turmoil.

The majority of Advocis members are regulated by provincial securities commissions. The OSC is the key regulatory body for securities intermediaries and dealers and oversees powers delegated to the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada. As such, the OSC's priorities, activities and operations directly affect most of our members.

The Regulatory Challenge:

Why are we here today?

We submit that you should, in the course of your consideration of how the OSC is doing, consider the following propositions concerning securities regulation and the impact of that regulation on consumer access to financial advice:

- First of all, Advocis believes that Ontarians should have ample access to professional financial advice, products and services and financial planning, and should be able to choose among a diverse range of financial service providers.
- Secondly, small business, professional financial advisors provide valuable services to Ontarians in delivering financial advice, products and services and have a significant place in the financial services sector.
- And finally, we strongly believe that the current regulatory framework and the direction in which regulation is going, does not favour a diverse range of choices for Ontarians and is limiting access to professional financial advisors.



Securities regulation at present is highly prescriptive and rules-based. Costly compliance burdens and prescriptive rules that suit the business model of the large financial institutions, and are applied to small business financial advisors, make it increasingly difficult for smaller firms and small scale professional financial advisors to serve the public.

Regulation has been an important factor in the increasing domination of the financial services sector by large, vertically-integrated financial institutions that have an employee-employer business model. In our view, the current regulatory structure favours these organizations by placing a disproportionately large regulatory burden on small, professional financial advisors and small financial services firms.

The increasing regulatory burden puts their businesses at risk due to high compliance costs. It makes professional financial advice less affordable and less accessible. It also creates barriers to entry for new financial advisors coming into the industry. All of this will negatively impact consumers.

We believe that, in many instances, higher compliance costs and the increased regulatory burden imposed by regulatory requirements are not adequately justified. Often when new regulatory requirements are proposed there is no clear problem or risk to consumers, and the additional rules and compliance costs offer no real consumer protection benefits. This saddles compliant financial advisors with more and more regulatory compliance costs and increases costs for consumers, but provides little benefit.

The net effect of layering on of regulation, or regulatory creep, is a trend to increased concentration in the delivery of financial products and services by fewer, larger financial institutions, and less choice and diversity in the marketplace for Ontario consumers.

I would like to add a comment about investor education and financial literacy.

We believe that the promotion of financial literacy is crucially important. Our members as financial professionals spend more time than almost anyone, educating Canadians about their finances. A regulatory framework that drives out accredited professional financial advisors will leave investors less able to understand financial matters.

I would now like to turn to Greg Pollock to highlight for the Standing Committee some of the more specific issues that we believe the Government of Ontario should consider when thinking about the performance and priorities of the OSC.

Greg Pollock, President and Chief Executive Officer, Advocis

Changing the Regulatory Focus:

Thank you, Kris.

Regulatory budgets are growing to accommodate the ever increasing reach of the regulators. Regulation and compliance are often needlessly and increasingly complex as



regulation comes from not only the Ontario Securities Commission but through their proxies, the SROs. This is in addition to the regulatory requirements that our members must adhere to coming from insurance regulators and from federal regulators.

Providers of financial services are increasingly tied up in more and more rules-based regulation while consumers are less and less able to afford and to access professional financial advice. At the same time, big risks and big threats continue to touch down and cause harm to consumers and undermine the financial services marketplace, and negatively affect the economy.

We believe the OSC should place more emphasis on investigation and enforcement of regulatory policies and rules, and on punishing bad behavior, rather than imposing overly burdensome regulations on intermediaries, the vast majority of whom are already compliant. Advocis believes that those who perpetrate crimes against consumers should be punished. Failure to deal effectively with massive frauds and to identify and deal effectively with bad actors jeopardizes confidence in our capital markets.

Key Recommendations:

Advocis has for the past several years provided input to the OSC on its annual Statement of Priorities. This year we also put in a pre-budget submission to the Standing Committee on Finance and Economic Affairs and to the Minister of Finance to make a number of important points and recommendations, many of which highlight real consumer and economic impacts of securities regulation.

We have provided you with copies of both of these documents for your consideration.

The OSC's 2008 Statement of Priorities states that market failures and other potentially adverse impacts need to be addressed without unduly impairing market efficiency through excessive regulation or costs of compliance.

We agree. We believe it is particularly important for the OSC to regulate effectively. One of the most effective ways to protect the interest of consumers is to ensure that they continue to have ample access to professional financial advice.

Recommendation 1: Therefore, we recommend that in providing guidance to the OSC, the Government of Ontario should make it a priority to ensure that small business, professional financial advisors and planners continue to be a vital segment of the financial services sector. This will maintain diversity in the marketplace, provide ample choice for consumers and allow consumers to have access to professional financial advice.

Recommendation 2: The government should direct the OSC to ensure that regulatory initiatives do not place an unfair burden of regulation on small business, professional financial advisors, and that regulation does not result in an uneven playing field that favours very large dealers and firms.

There are viable alternatives to the current regulatory approach. Layering more rules and regulations governing how advisors interact with their clients is placing unsustainable burdens on professional financial advisors.

We believe a principles-based approach should be considered. Principles-based regulation focuses on outcomes and offers more flexibility to deal with new circumstances and new products.

Recommendation 3: We recommend that the OSC and the two SROs should consider a principles-based approach to regulation, before imposing any new prescriptive, rules-based regulation.

A principles-based approach has been used effectively by provincial insurance regulators in Ontario and across Canada and by financial services regulators in other countries such as the United Kingdom.

Financial advisors deal directly with consumers, and we strongly believe that any initiative that will change the way advisors are permitted to interact with their clients should have our input. We wish to be actively involved in developing, reviewing and commenting on proposals regarding major policy or rule changes that have a direct impact on our members and the entire advisor community. Getting the approach right in the early stages of policy development is crucial if regulators' objectives are to ensure that the industry embraces specific regulatory proposals being contemplated, and the outcome of consumer protection is to be achieved in a balanced manner.

Unfortunately, the early development of regulatory policies has often taken place in a closed environment, with input from large dealers but without the benefit of broad industry input at the start of the process. Moreover, regulators who initiate policy without input from all relevant market participants during the early development stages risk incorrectly defining problems, and failing to anticipate the impact on all relevant stakeholders. The result is ineffective policy.

We also note that the Public Appointments Secretariat is currently advertising for candidates to fill three Part-Time Commissioner positions with the OSC. For one position, the ad calls for candidates who have senior experience, such as CEO or CFO, with a corporate issuer. For another position, the candidates should have significant leadership and management experience with an investment dealer. For the third opening, they want litigation or adjudication experience in securities, corporate or administrative law.

What is missing here? Financial advisors.

If the primary priority of securities regulation is investor protection, financial advisors and consumers must be recognized as key valuable stakeholders. Yet the Commission seems to have a narrow perspective on who should sit on the Commission and what type of background and experience should inform its decisions. In fact, the Commissioners come

primarily from corporate issuers, investment dealers and securities lawyers from large law firms.

Something similar occurs in the decision-making and the regulation that is delegated by the OSC to the MFDA and IIROC: it is issuer- and dealer-centric, and in their policy-development, financial advisors tend to be consulted as an afterthought.

We believe that financial advisors should be represented on the Commission and SRO boards, and on the Investor Education Fund.

***Recommendation 4:* Therefore, we recommend that the government develop policies and procedures for the OSC and the SROs to ensure that all stakeholders that are likely to be directly affected by regulatory proposals are consulted at an early stage in the policy development process. Furthermore, the OSC should expand its criteria for appointing commissioners.**

Effective public policy requires identifying the problem or issue correctly and then using appropriate methods to address it. In some cases (such as with IIROC's Financial Planning Rule), rules are being proposed to regulate activities even though no problem has been identified.

***Recommendation 5:* Therefore, we recommend the Government impose requirements on the OSC and the SROs to ensure that before implementing any new major regulatory requirement that it develop a clearly articulated statement of the problem that the regulation is meant to address. The OSC should also conduct robust cost-benefit analysis, to assess the likely investor protection benefits and the costs to market participants and to consumers.**

Failure to identify problems that clearly require intervention, and failure to assess the impact on market participants and consumers in relation to the likely benefits, has led to ill-conceived regulatory initiatives such as IIROC's recently proposed financial planning rule.

Advocis and various other stakeholders have criticized this proposal to regulate financial planning activities of all dealer personnel as needlessly intrusive on financial planning activities that are unrelated to the dealer's business with no proven consumer protection benefit.

Advocis firmly believes that financial planning should be subject to appropriate regulation, and that people who hold themselves out as financial planners should be subject to proficiency requirements.

The proposed IIROC rule is an example of SRO regulation that is skewed in favour of large dealers with an employer-employee business model, and is severely prejudicial to smaller, professional financial planners.



This is also an example of an inadequate consultation process. The proposed rule was issued for comment in the summer of 2008 with a very short response turnaround timeline and without prior consultation with financial advisors.

The rule would require investment dealers to supervise and apply detailed rules to financial planning activities of advisors that are undertaken with clients outside the business of the dealer and do not actually involve the purchase or sale of investment products through the dealer.

It creates a major conflict of interest since it can prevent objective financial advice and compromises client-advisor confidentiality, since dealer firms will exercise control over the financial planning process to the detriment of consumers. Moreover, dealers may lack the technical expertise to oversee the financial planning process.

In our view, there is no evidence that SROs and securities dealers, which focus their regulation and regulatory compliance on securities transactions, are able to supervise a complex, multidisciplinary financial planning process in a way that serves the interests of consumers.

Advocis is concerned that dealers will tightly control all financial planning activity undertaken by Approved Persons outside the dealer, or will simply prohibit such activity. In either event, access to objective professional financial planning will be severely impaired.

Conclusion:

In conclusion, we believe that the OSC should change its approach and embrace smart, principles-based regulation that recognizes the value of financial advisors to Ontarians. It should recognize financial advisors appropriately as key stakeholders in the regulation of financial services.

We believe the government needs to take a more proactive role in managing the priorities of securities regulation in Ontario, which has a significant impact on intermediaries, consumers, and the economy.

Finally, we believe the government should offer ongoing direction to the regulators to help ensure that Ontarians continue to have access to professional financial advice and choice in financial services.

Thank you again for allowing us the opportunity to appear. We would be pleased to entertain questions from the Committee members.
