



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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Alberta Treasury Board and Finance
Ninth Floor, 9820 - 107 Street
Edmonton, Alberta, T5K 1E7

VIA EMAIL: Paul.Bretscher@gov.ab.ca

Dear Sirs/Mesdames:

Re: Alberta 2015 Pre-Budget Feedback

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to respond to the call for feedback in regards to the Alberta 2015 Pre-Budget consultations.

Introduction

About Advocis

Advocis, The Financial Advisors Association of Canada, is the association of choice for financial advisors and planners. With more than 11,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Professional financial advisors and planners are critical to the economy, helping consumers make sound financial decisions that ultimately lead to greater financial stability and independence. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

Advocis is the oldest and largest voluntary professional membership association of financial advisors and planners in Canada. The Association was founded in 1906 as the Life Underwriters Association of Canada. With over 1,400 advisors and planners in five chapters across Alberta, Advocis members are provincially licensed to sell life and health insurance, mutual funds and other securities.

Alberta has a long standing tradition of working cooperatively with the government and regulatory bodies such as the Alberta Insurance Council and Alberta Securities Commission to ensure that consumers of financial services are adequately protected, have ample choice and access to professional financial advice, and that the financial advisory business continues to be an important part of Alberta's economy.

One example of how Advocis has worked cooperatively with the Government of Alberta is the Supreme Court of Canada case *Western Bank et al. v. Alberta*. Advocis appeared as an intervener in this landmark case on request of the Alberta Insurance Council to support provincial regulation in the area of consumer protection and market conduct oversight, in order to advance the key principles of enhanced consumer protection and a level playing field for all who sell life and health insurance. The favourable decision by

the Supreme Court of Canada in May 2007 gives Alberta regulatory authority in this area and preserved the province's licensing requirement for federally regulated financial institutions selling group creditor mortgage and loan insurance.

Our members are a vital resource and have a great deal of expertise in areas of importance to the government such as in the fields of health care, retirement planning and pension plans, since they service a significant percentage of employee benefit programs in Alberta. Over the past few years, Advocis has made representations to the government on improving the pension and retirement system, the *Securities Act*, *Insurance Act*, *Alberta-BC Trade, Investment and Labour Mobility Act*, *Credit Union Act*, and the *Civil Enforcement Act*.

We support the commitment of the Government of Alberta to the success of the Trade Investment and Labour Mobility Agreement (TILMA) with the Government of British Columbia, and the New West Partnership Trade Agreement (NWPTA) with British Columbia and Saskatchewan. We believe the implementation of these interprovincial agreements will make it easier for Alberta enterprises in the business of insurance and securities advice and distribution to do business in their neighboring jurisdictions. These agreements should also strive to make it easier for insurance agencies, insurance licensees and securities registrants to become licensed and/or registered in the participating jurisdictions, on the basis of them having met the requirements in their home jurisdiction.

Advocis hopes to continue to engage the government in meaningful dialogue and work with the government to develop appropriate solutions to regulatory and consumer protection issues.

Financial advisors professionalism

Advocis members embody professionalism based on education, best practices, and high standards of proficiency and ethics. Advocis promotes the professionalism of financial advisors through:

- The Advocis Code of Professional Conduct
- Guidance on best practices
- Errors and omissions professional liability insurance coverage that protects consumers
- Professional designations supported by a comprehensive curriculum and rigorous standards – Advocis' Chartered Life Underwriters (CLU), Certified Health Insurance Specialist (CHS), and educational support for the attainment of the Certified Financial Planners (CFP), and
- Mandatory competency-based continuing education.

Advocis members are primarily owners and operators of small businesses and create thousands of jobs across the province. Advocis members provide comprehensive financial planning and investment advice to hundreds of thousands of Albertans and small businesses within the province, in a number of areas including estate and retirement planning, wealth management, risk mitigation, tax planning, employee benefits, critical illness and disability insurance.

Advocis members maintain lasting relationships with their clients. They understand their clients' needs and goals, and take a long-term planning approach that guides their clients through all economic cycles and market conditions.

Issues

1 - ENHANCING CONSUMER PROTECTION BY RE-THINKING FINANCIAL LEGISLATION

Problems with the Existing Regulatory Framework

The existing regulatory framework places Albertans at risk: while the public should be able to place their confidence in their financial advisor, trusting that he or she meets rigorous standards of professionalism, proficiency and accountability, the reality is that this is not always the case. In fact, the public is exposed due to four major flaws in the existing framework:

- (a) Anyone can call themselves a financial advisor and offer planning and advice.

Anyone, regardless of their training, experience or education, can hold themselves out to the public as a financial advisor, financial planner, investment advisor, or countless other titles. Neither the title nor the scope of work is protected, so there is nothing that prevents someone from calling themselves a financial advisor and offering what they purport to be financial advice to the public, even if they have no training, experience or financial acumen.

This is a serious consumer protection risk that must be addressed; time and time again, consumer surveys have shown that most mistakenly believe that titles such as financial advisor are regulated and someone holding themselves out as such have earned the right to do so through education and experience. Consumers put their faith in the title as a proxy for expertise, but unlike doctors, lawyers or architects, anyone can claim to be an advisor or offer financial advice or planning – which could leave the public vulnerable to incompetence or outright fraud.

- (b) Existing regulation is focused on the sales of products, not the ongoing relationship of trust between financial advisors and their clients.

The existing regulatory framework does not reflect the manner in which most Albertans seek financial advice and planning.

Existing regulation is based on the type of product sold: insurance products, mutual funds or other securities are regulated by entities including the Alberta Insurance Council (“AIC”), the Mutual Fund Dealers Association of Canada (“MFDA”) and the Investment Industry Regulatory Organization of Canada (“IIROC”). Each regulator has its own standards and requirements, and while they are strong at regulating their member insurance carriers and mutual fund or securities dealers, including regulating the constant product innovation in the industry, they do not have a collective focus on the retail consumer's overall advisory experience.

Looking at the issue from the consumer’s perspective illustrates the problem: many advisors hold multiple licenses which allow them to provide consumers with risk management and wealth solutions from across the insurance, mutual fund and securities worlds. But in practice, most consumers do not think of the financial industry in such strict “silos”. Instead, consumers work with their advisor to develop holistic financial plans, and they want their advisor to be professional, knowledgeable and accountable, so that the advisor can provide the complete coverage they need.

Most consumers are not particularly interested in knowing that product x comes from the insurance universe and product y comes from the mutual fund universe – and as product features converge, it is increasingly difficult to tell them apart. But, in the current regulatory framework based on product sales, it is often the case that the client-advisor relationship is regulated not by a single entity, but by a combination of them – and the protections that consumers receive vary based on the sector of the product's origination. We have seen the importance of this distinction coming to light if problems arise, leaving consumers confused and disappointed.

We believe that consumers should enjoy high degrees of protection throughout their advisory relationship that is not dependent on the nature of the underlying products that fulfill their financial plans. There should be an overarching code of conduct and an industry-wide requirement to maintain responsible levels of errors and omissions insurance, neither of which exists today.

This sectoral approach also highlights why existing regulators cannot effectively regulate the holistic advisory relationship. Certain stakeholders may suggest that regulation of financial advisors should fall under the auspices of existing regulatory bodies, and it is true that in recent years, some have given greater attention to the advisory relationship (for example, through securities regulators' Client Relationship Model reforms).

Despite this laudable effort, existing regulators are structurally limited by their jurisdiction of authority; for example, even if the AIC were to completely overhaul its expectations of licensees, those changes would only impact the consumer's relationship in regards to his or her purchases of insurance products – the consumer's experience for mutual funds would be unaffected.

In an ideal world, all regulators would set comparable standards so that the client would be equally protected, regardless of the product's origination. But our century of experience and general common sense tells us that when you have multiple regulators that were created on the basis of regulating products, not advice, which already have standards that (in some cases) vary widely from each other, coordinating policies on financial advice is nearly impossible. And even if regulators did manage to agree to a uniform set of policies, those policies would do nothing to capture those individuals who are not registered at all, such as the fee-only planner who does not sell products.

(c) There is no firm and clear requirement for advisors to keep their knowledge current.

One of Advocis' core membership requirements is that advisors keep their knowledge current by completing continuing education courses each year, including courses on professionalism and ethics. But for the same reasons discussed above, the regulatory requirements for continuing education are completely variable based on the product's sector of origination.

An advisor who does not keep their knowledge current is an advisor that puts their clients at risk; in this industry, competition amongst insurance carriers and distributors, and securities dealers is fierce, so product change and innovation is constant. Therefore, static knowledge quickly becomes obsolete and harms advisors' ability to act in the best interests of their clients.

Advocis believes that all individuals offering financial advice or planning to the retail consumer should be required to complete continuing education on a regular basis, which includes an emphasis on education related to professionalism and ethics.

(d) There is no effective, industry-wide disciplinary process.

The majority of advisory relationships are beneficial to the public, but some inevitably do not work out as planned and, sometimes, this is the fault of the advisor. The industry requires a strong and effective disciplinary process to ensure that those advisors who have committed misconduct are appropriately disciplined in the interest of protecting the public and deterring others from similar behaviour.

Individually, the AIC, MFDA or IROC are empowered to impose a wide variety of sanctions, including stripping advisors of their license or registration. However, the limitations of the existing product-based regulatory framework are most apparent when it comes to discipline: each regulator's enforcement powers are limited to its respective sector. This means that, for example, if an advisor commits misconduct in the sales of mutual funds that is so egregious that the MFDA determines he is unfit to work in the industry and revokes his registration, there is nothing that prevents that same advisor from continuing to advise on and sell segregated funds through his insurance license.

We believe this sector-hopping represents unacceptable consumer risk. The type of serious misconduct which warrants an advisor's outright expulsion from one sector, such as fraud or gross negligence, speak to that advisor's conduct and ethics and are not sector-specific concerns; letting such an advisor continue offering "advice" to any Albertan is a disservice to the public. And even if that advisor is eventually identified and removed by other regulators in their respective sectors, that person can simply continue offering advice on an unlicensed basis since the scope of work is not protected; for example, he could "advise" clients to invest in an affiliate's ponzi scheme.

Also currently lacking is an easy mechanism for the public to verify their advisor's credentials and disciplinary history. While regulators do maintain websites where the public can search for information on their advisor, the information returned is only applicable to the regulator's sector. As discussed above, the general public does not understand the difference between the various regulatory bodies and is not likely to canvass each one to look up their advisor. In the example above, if a prospective client were to look up the advisor on only the insurance regulator's website, the client would not see the advisor's expulsion from the mutual funds sector. The client might then mistakenly believe that the advisor's overall disciplinary history was clean.

Advocis strongly believes that consumers should have a one-stop access point for reviewing a prospective advisor's complete disciplinary history that is not limited to the domain of one sector's regulator. It must also capture those individuals who offer advice or planning without the sales of products who are therefore not registered with any existing regulator. That is, rather than being based on the archaic regulatory structure, this critical consumer tool must be designed from the consumer's point of view.

These four major shortcomings of the existing regulatory framework expose consumers to unnecessary and unacceptable risk. They arise from the fact that current regulation does not reflect the modern, holistic and cross-sectoral approach to financial advice and planning that most consumers receive.

Our Solution: Raising the Professional Bar

Fortunately, Advocis has developed a solution that is simple, straightforward, and does not require significant government resources to implement.

Entitled *Raising the Professional Bar*, our solution elevates the provision of financial advice to a recognized profession. Simply, it requires that anyone who holds himself or herself out to the public as a financial advisor, or who is in the business of offering financial advice or planning services at the retail

level, be a member in good standing of new authority that has, as its focus, the licensing and conduct regulation of these persons (the “Authority”).

The Authority would establish key criteria for its members, including: a code of professional conduct; a requirement that members maintain errors and omissions insurance; initial proficiency and continuing education requirements to maintain licensing; and a complaints and disciplinary process that empowers the Authority to suspend or cancel the advisor's membership.

The Authority would also maintain a public-facing database whereby consumers could conduct a "one-stop" check of a prospective advisor's credentials and disciplinary history. Unlike the registries maintained by existing regulators, which only contain information pertaining to the advisor's sales activities in the regulator's respective sector, the Authority's registry would be based on the conduct of offering advisory services to the retail public. It would therefore transcend product sectors. This focus on scope and nature of work would also capture those advisors and planners who are currently not registered with any regulator and would therefore not appear on any registry.

We first proposed our solution in February 2013, and we have continually refined it based on feedback from stakeholders including politicians and regulators, consumer groups, product manufacturers and distributors, and practicing financial advisors. Based on this feedback, we have determined that the best structure for the Authority is as a delegated administrative authority (“DAA”) which has been delegated its jurisdiction in statute by the Minister of Finance.

DAAs reduce the government's footprint: its employees are not public servants and they are self-financing, largely through fees paid by its members. This model has gained acceptance in several provinces: notable examples include Ontario's Travel Industry Council, Alberta's Boilers Safety Association, and the British Columbia Safety Authority.

The Authority would be established as a not-for-profit entity dedicated to financial advisor professionalism in the public interest. The silos which currently exist between the insurance and securities sectors at the product level would remain intact, in order to preserve existing product-focused regulatory expertise, but the silo approach would be removed at the level of the holistic advisor-client relationship.

It is essential that the DAA be entirely independent from financial institutions, as well as from product manufacturers and distributors. The province would retain ultimate accountability and control of the Authority, with the Authority maintaining key obligations to the government, such as through annual reports and audited financial statements, and being subject to operational reviews.

The solution provides benefits to all market participants: first and foremost, consumers would benefit from knowing that all advisors meet proficiency requirements, just as they do with their architects or engineers. They would also benefit from having a simple way to verify their advisor's credentials and disciplinary history, without having to navigate the maze that is the current regulatory landscape. Finally, they would enjoy the support of a disciplinary system with teeth: it would be a system that actually protects the public, rather than potentially off-loading one sector's problem onto another sector and a new set of unsuspecting consumers. The simplicity of having the regulatory accountability for financial advisors enshrined in one body, the Authority, empowers consumers should the need to register a complaint arise.

Financial advisors would benefit from enhanced public trust, status and confidence as true professionals, and we know that our members would be very supportive of unethical colleagues who tarnish their collective reputation being removed from the industry once and for all. The government would benefit

from enhanced consumer outcomes, including reduced public financial reliance through a DAA model that is self-financing by industry. Product providers and distributors would benefit from the professionalism of the advisors who represent their companies to the public on a day-to-day basis.

This is only an introduction to our solution; there are many more details and we look forward to engaging regulators and Members of the Legislative Assembly (MLAs) in the coming months to expand on what is clearly a critical consumer protection initiative.

2 – ADVISOR INCORPORATION

Advocis has been working with the Alberta Securities Commission and the Alberta Ministry of Finance over the past eight years on the issue of advisor incorporation. Professionals within Alberta such as doctors, lawyers, and accountants are allowed to incorporate their businesses. However, Alberta denies mutual fund and securities advisors the right to incorporate. This means that advisors cannot take advantage of the benefits of running their business through a corporation.

Life insurance licensees are permitted under Alberta's *Insurance Act* to incorporate their business as an agency. It makes little sense for a dual-licensed advisor who sells both insurance and mutual fund/securities products to operate their insurance business through a corporation but not their mutual fund and securities business. This creates an administrative burden for a comprehensive financial advisory business dealing with the same set of clients, since the advisor must run two sets of books and administrative procedures.

Incorporation is beneficial to consumers as their affairs are dealt with by a corporate entity which provides continuity no matter what happens to the individual advisor. Accordingly, incorporation greatly assists in succession planning. Furthermore, our legal research confirms that consumer will not be harmed under a corporate structure for mutual funds and securities.

The inability of advisors to structure their business as a corporation is both costly and unfair. In most provinces, including British Columbia and Saskatchewan, provinces with which Alberta is harmonizing labour practices under formal agreements such as the NWPTA, financial advisors are permitted to receive their mutual fund commissions through their corporations. This places Alberta advisors at a severe competitive disadvantage.

Legislative amendments have been made to the Alberta *Securities Act* that would allow for incorporation, and the legislative amendments have been passed. However, the sections of the Act that relate to incorporation will not come into force until a future and unspecified date. We appreciate that the Alberta government may want to wait until legislative changes are made to securities acts in other jurisdictions prior to bringing into force their legislative changes. If that is indeed the case, we would urge the government of Alberta to instruct the ASC to take advantage of the MFDA Rule 2.4.1 amendment that would allow for incorporation of mutual funds until the amended section within the Alberta *Securities Act* is brought into force.

CONCLUSION

We urge the Government of Alberta to recognize the value of professional financial advisors to the well-being of all Albertans and we look forward to meeting with MLAs at our November 24th, 2015 Alberta Legislative Day to further discuss these and other pressing issues.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Pollock', with a long horizontal flourish extending to the right.

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