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June 6, 2012

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

Dear Mr. Howell:

**Re: Financial Services Commission of Ontario (FSCO) - Draft Statement of Priorities and Strategic Directions for Fiscal 2012/13**

Thank you for the opportunity to comment on FSCO's Draft Statement of Priorities and Strategic Directions for Fiscal 2012/2013 (the "Draft SOP").

**Who we are**

Advocis is the association of choice for financial advisors and planners. With over 6,000 advisors in Ontario, Advocis members are provincially licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses that create thousands of jobs across Canada.

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 liability insurance that protects consumers;
- Professional designations supported by a comprehensive curriculum and rigorous standards, including Advocis' Chartered Life Underwriter (CLU), Certified Health Insurance Specialist (CHS), and educational support for the attainment of the Certified Financial Planner (CFP) designation; and
- Mandatory competency-based continuing education.

Advocis members are a resource for governments on financial matters: we have a longstanding tradition of working cooperatively with the government and regulatory bodies such as the Financial Services Commission of Ontario and the Ontario 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 Ontario's economy. We hope to continue to engage regulators in meaningful

dialogue and to work together to develop appropriate solutions to regulatory and consumer protection issues.

### **The challenging environment consumers face today**

Canadians are feeling more financially vulnerable than ever. Household debt levels are at record highs, leaving millions vulnerable to inevitable interest rate hikes. Private pension plans face serious shortfalls due to poor and volatile investment returns. At the same time, public retirement benefits are being reduced, as governments are faced with their own tight fiscal situations. As a result, Canadians are uncertain about their retirement futures and are increasingly aware of the risks associated with financial services. They are demanding more effective consumer protection from financial services providers and from regulators. They are also expecting higher standards of proficiency, product knowledge and professionalism from their financial advisors.

Professional financial advisors and planners can help in these turbulent times, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than financial advisors, educating them about financial matters and helping them to reach their financial goals. 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 applauds FSCO's commitment to smart regulation**

We applaud the approach that FSCO and other insurance regulators across Canada have taken in working with the insurance industry to implement principles-based solutions to conflict of interest and product suitability matters.

We also welcome FSCO's focus on results that matter, and on measuring outcomes. We agree that FSCO's approach to regulation, which includes identifying concrete problems and implementing effective regulation that is no more prescriptive than necessary, is the approach that best protects the public interest while ensuring that the industry remains healthy and robust.

### **Principles-based regulation (PBR)**

Product convergence between the securities, banking and insurance sectors is an ongoing trend. However, there are legitimate differences between how these sectors operate. While it is important to ensure that similar products are regulated in a similar fashion, and avoid regulatory arbitrage, a one-size-fits-all approach will not work. Advocis believes that a principles-based approach to regulation offers the flexibility that is needed to ensure consistent regulation that protects consumers and avoids regulatory arbitrage.

Three key elements of PBR are:

- broad-based standards in preference to detailed rules;
- outcomes-based regulation; and
- acceptance of increased responsibility by trade associations and professional bodies in establishing suitable practices to meet the general principles established by the regulator.

We are gratified to note that we believe that FSCO's approach to regulation is consistent with PBR.

**Develop and implement social media initiatives and Web 2.0 enhancements for public website, (and) Enhance pension stakeholder outreach and education.**

Advocis welcomes FSCO's intention to develop and implement social media outreach and to enhance stakeholder outreach and education.

FSCO's webinar in November 2011 concerning the impact of family law developments on pension plan administrators is an excellent example of how regulators can use new information technologies effectively to educate industry participants and address concerns in a timely fashion. We note that programs such as this have potential to serve as accredited continuing education for life agents, and we commend FSCO for taking the initiative to develop such programs.

Our comments are as follows:

**Five-year statutory review of the Credit Unions and Caisses Populaires Act**

FSCO has stated in the Draft SOP that it will assist the Ministry of Finance in conducting five-year statutory reviews of the Mortgage Brokerages, Lenders and Administrators Act, 2006, and the Credit Unions and Caisses Populaires Act, 1994.

In 2005, Advocis provided the Ontario Ministry of Finance with comments on the Consultation Document for the 2005 Review of the Credit Unions and Caisses Populaires Act (the "Act"). In our comments, Advocis called for a fair and balanced regulatory framework for credit unions that ensures consumer protection, particularly in regard to insurance products. We expressed the concern that the expansion of insurance retailing powers, which had been sought by the credit union sector, would not be in the interest of the consumer.

We noted in particular the risk of tied selling. We also stressed that credit unions, when engaged in selling authorized types of insurance such as credit insurance pursuant to their existing limited powers, should be subject to the same licensing, supervision and market conduct requirements that otherwise apply to the distribution of insurance products.

Advocis looks forward to the opportunity to provide input to the five-year statutory review of the Act.

**Administrative monetary penalties**

Advocis welcomes the implementation by FSCO of the Administrative Monetary Penalties model to provide FSCO with an additional enforcement tool to address instances of non-compliance in the insurance sector.

As FSCO notes in the Draft SOP, "FSCO has tools to deal with extremely serious matters and minor matters in the insurance sector, but does not have a suitable tool for matters where an administrative monetary penalty may be the best approach to resolving matters of non-compliance."

We believe it will be advantageous for FSCO to have the option of imposing administrative monetary penalties in circumstances that warrant a response but that are not of sufficient gravity to justify FSCO investing the considerable time and resources that are involved in a formal proceeding. This will enhance FSCO's ability to deal with compliance problems more effectively and expeditiously than at present, and will help to deter inappropriate conduct from occurring in the first place.

### **Proposed market conduct review**

FSCO states in the Draft SOP that it proposes to “undertake a market conduct review to determine how the life insurance industry is ensuring that consumers get appropriate information to make informed decisions when purchasing life insurance products.”

According to the Draft SOP,

“(t)he focus of the review will be to understand and assess the processes life insurance agents use in making recommendations to consumers and the processes in place at life insurance companies when developing and distributing products.

The review will also consider the actions life insurance agents and companies are taking to support the financial literacy of their clients.”

The client-advisor relationship and in particular the role of the advisor in helping the client to make informed decisions are at the very core of the mission of professional financial advisors, and at the core of FSCO's regulatory mandate.

This initiative will build on the work of the Industry Practices Review Committee (IPRC) of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) (including FSCO), which reported in December 2008 that insurance companies and agents were serving consumers well in ensuring product suitability, disclosure of conflicts of interest and ensuring priority of the client's interest.

In particular the IPRC found that the insurance industry was successfully implementing the following three core principles developed by CCIR:

1. Priority of the client's interest
2. Meaningful disclosure of real or perceived conflicts of interest, and
3. Product suitability.

Making sure that consumers are served by ethical, professional advisors who give priority to the interests of the consumer is an ongoing priority for the financial services industry in Canada and internationally, and for regulators such as FSCO.

We look forward to participating in FSCO's review of the role of insurance agents and companies, and we trust that it will once again demonstrate that consumers are being well-served by the insurance industry. At the same time, we recognize that the financial services industry and insurance products are constantly changing and that regulators need to stay on top of the changes.

In regards to financial literacy, we believe that insurance advisors play a vital role in supporting the financial literacy of their clients. No one devotes more time and attention to educating

consumers about their financial affairs than financial advisors. We would be pleased to work with FSCO on financial literacy initiatives that are developed through the market conduct review.

### **Financial hardship unlocking**

FSCO has stated that it will work with the Ministry of Finance on changes to financial hardship unlocking that were announced in the 2012 Ontario Budget.

Advocis welcomes these changes that will remove the requirement to obtain the consent of the Superintendent of Financial Services in order to withdraw money from locked-in accounts in cases of financial hardship.

Advocis has expressed the view in response to regulatory consultations about unlocking, that while in general, funds in a pension plan should be preserved for use during a person's retirement and should not be used for other purposes, exceptions should be made in cases of hardship. Thus Advocis believes that unlocking should be permitted from a locked-in retirement account in the following situations: in cases of low income; if there is risk of eviction from a principal residence or rental premises; to access the funds for medical treatment for the person, their spouse or dependents; and if needed for residential renovations, alterations or construction to accommodate the use of a wheelchair, or other needs related to a disability or illness. Advocis also supports the harmonization of unlocking rules amongst provinces and federally.

### **Harmonization of life and accident and sickness insurance**

FSCO states in the Draft SOP that it will work with the Ministry of Finance to review major parts of the Insurance Act such as life insurance and accident and sickness insurance, as well as other insurance-related legislation. This initiative is in line with the 2012 Ontario Budget, wherein the government announced that it would be proposing amendments to the life insurance and accident and sickness insurance parts of the Insurance Act to enhance consumer protection, reduce regulatory burden and harmonize with other Canadian jurisdictions.

We note that Advocis has participated actively in stakeholder consultations with the Ministry of Finance regarding the Agreement on Internal Trade, and regarding the development of work plans pursuant to the Trade and Cooperation Agreement between Ontario and Quebec. Specifically, we understand that work plans are being developed with respect to collaboration on financial literacy initiatives and the regulation of insurance product distribution and the harmonization of education requirements for insurance agents.

Advocis welcomes this initiative, and would be pleased to bring the expertise and insights of financial advisors to the table, to assist FSCO in its work with the Ministry on the review.

### **CCIR recommendations regarding distribution of insurance**

Advocis has participated in the stakeholder consultations that the CCIR has undertaken in the course of its review of the role of managing general agencies (MGAs) in the distribution of insurance.

Advocis will be providing further input in response to the most recent Position Paper that was published by the CCIR's Agencies Regulation Committee (ARC) in May 2012, "The Managing General Agencies (MGAs) Distribution Channel in the Life Insurance Industry." We believe the

ARC has set out sound recommendations regarding the respective roles of insurers and MGAs in relation to agent suitability and conduct.

We welcome the opportunity to provide input to FSCO as it moves forward in its consideration of the CCIR review of the MGA channel.

### **Work with CAPSA on the development and implementation of CAPSA's Strategic Plan 2012-2015**

FSCO has stated in the Draft SOP that it will work with the Canadian Association of Pension Supervisory Authorities (CAPSA) on the development and implementation of CAPSA's Strategic Plan 2012-2015. This will include a review of the current regulatory environment and trends, determination of CAPSA's strategic priorities over the next three years and specific initiatives to address these priorities.

Advocis welcomes this initiative. It is vitally important to the long-term retirement security of Canadians, that provincial and federal regulators in Canada should work together to coordinate and harmonize the regulation of pensions. Advocis has been participating actively in both federal and provincial consultations regarding pension regulation and the need to increase participation by Canadians in pension plans and other retirement savings programs.

We commend FSCO for supporting harmonized regulatory solutions through its participation with national organizations such as the Joint Forum OF Financial Market Regulators, CISRO, CAPSA and CCIR.

### **Report Back on Priorities and Key Initiatives from 2011**

We commend FSCO on the progress that it has achieved in meeting key initiatives identified in last year's Statement of Priorities.

We believe the Draft SOP exemplifies FSCO's commitment, expressed in its Performance Management Framework, to provide transparency, accountability and value for money, to measure what FSCO does and "focus on results that matter."

We look forward to working with FSCO to assist in achieving its objectives for the coming fiscal year and into the foreseeable future.

Advocis appreciates this opportunity to provide comments on FSCO's Priorities 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](mailto:eskwarek@advocis.ca).

Sincerely,



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



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