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May 21, 2009

Bob Christie
Chief Executive Officer and
Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, Ontario
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Dear Mr. Christie:

Re: FSCO Statement of Priorities – June 2009

Advocis appreciates the opportunity to provide comments to the Financial Services Commission of Ontario (FSCO) regarding its Draft Statement of Priorities – June 2009.

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public and government.

Advocis is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our 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 who create thousands of jobs across Canada. Advocis members are professional financial advisors who 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. We represent advisors at all stages of the business cycle, ranging from new entrants to the industry through to mature practices led by leaders in the industry serving a significant client base.

Given that FSCO is the regulatory body for insurance intermediaries in Ontario, its strategic priorities and activities directly impact Advocis members. As a key stakeholder in the policy development process as it relates to the licensing, market conduct and consumer protection in the distribution of life and health insurance, we take note of the new mandate and vision and are pleased that its Vision is *“To be a progressive and fair regulator working with its stakeholders...”*. FSCO states that it remains committed to consumer protection and supporting a healthy and competitive financial services industry, and as such, we would suggest revising the Vision Statement to: *“To be a progressive and fair regulator working with its stakeholders to support a strong **and competitive** financial services sector.”* so as to accurately reflect that commitment (suggested additional words bolded). If the vision statement has been approved within a separate process, we would hope that FSCO considers the need to promote a competitive financial services sector as a priority.

As a key stakeholder, we are pleased that FSCO's core values includes the concept of fairness – *Strive to deal with stakeholders in an even-handed manner*. We commend both FSCO and the Canadian Council of Insurance Regulators (CCIR) for continuing their tradition of consulting with stakeholders at the early stages of policy development. We believe that this is extremely important, since it is in the early stages of developing new policy where stakeholder input is the most valuable. It is our hope that other Canadian regulators will follow the example set by insurance regulators as a model for undertaking meaningful public consultations with consumers, financial advisors and other market participants.

Environmental Scan

The Statement identifies certain external factors which are challenges that must be taken into account in developing its strategic priorities. Since the fall of 2008, the sharp downturn in the financial markets and the global economic recession has occupied the attention of governments and regulatory bodies around the world. This has had a negative effect on many sectors of the economy including the financial services sector (including insurance, pensions, mutual fund managers and lending institutions). According to the Statement, this has resulted in a significant decline in consumer confidence and some consumer's have less ability to tolerate risk. However, the decline in financial markets and economic downturn should not change an investor's risk tolerance if an investor is investing for the long-term.

With respect to licensing, market conduct and consumer protection in the distribution of life and health insurance, FSCO takes into consideration market uncertainty and risks and is required to carefully assess how market risk and economic uncertainty and downturn translates into risks in the sale and distribution practices for insurance as it is these risks for which FSCO is responsible and for which the public has mandated it to regulate. When developing risk-based strategies to address current economic conditions, FSCO needs to determine what risks have been created (if any) or increased as a result for which it is responsible. Regulatory tools need to be carefully chosen in order to develop a clear understanding and assessment of the risks and prioritize them appropriately. For example, the need to shore up capital reserves for certain insurance products should not necessarily trigger a need for investigation of those insurance intermediaries who have sold those products to their clients. Moreover, market uncertainty should not necessarily be used as basis for re-regulation. The decline in financial markets and economic downturn should also not change an investor's risk tolerance

Once a risk has been identified, regulators need to be open-minded when determining the appropriate response to that risk. The regulators need to assess whether communication to financial advisors about the identified risk is sufficient or whether additional regulation or enforcement of existing regulation needs to be enhanced.

A risk based approach to market conduct regulation is challenging given that: risks are not clearly defined and have qualitative as well as quantitative aspects; information obtained by regulators may not be comprehensive; there may be a lack of rigor around the significance of the information given regulatory tools available; and there are communication challenges between regulators and intermediaries given the thousands of insurance intermediaries (as opposed to a relatively few number of large institutions with prudential risk based regulation). Regarding this last point, we would urge FSCO to take into account the different distribution channels when developing its risk-based approach to ensure that as many different types of intermediaries are part of the information gathering stage and ensure that different types of intermediaries are consulted at an early stage of the policy development process.

We believe that a principles-based approach to regulation, which is focused on outcomes, will provide greater flexibility to deal with new circumstances, new challenges and new products while providing consumer protection and an effective and efficient means of regulating market participants.

The core regulatory principles that should guide regulators are:

- **Act only in the case of market failures, information asymmetries or matters of consumer protection;**
- **Identify the problem through detailed consultation and analysis; and**
- **Employ principles-based regulatory responses unless there is clear evidence that absent a prescriptive policy response, harm will be done to the market or consumers.**

We would urge FSCO to take into account the different distribution and sales channels when developing its risk-based approach to ensure that as many different types of intermediaries are part of the information gathering stage and ensure that different types of intermediaries are consulted at an early stage of the policy development process.

An example of where a principles-based approach to implementing regulation has recently been successful is with the development of the principles around managing conflicts of interest for insurance intermediaries. Once it was determined by the CCIR/CISRO Industry Practices Review Committee (IPRC), which is chaired by FSCO, that no illegal practices were occurring in Canada, and following an intensive consultation process with the industry, the IPRC determined that the best course of action was to examine the implementation of principles by the industry, especially given that no significant problems existed. The insurance industry has been working with regulators to implement these principles at the company, agency and individual advisor levels. Recent surveys of insurance companies and insurance agents conducted by FSCO have revealed that the implementation of these principles in practice has been met with a high degree of satisfaction by the regulators.

Strategic Priorities

In order to respond to these challenges, FSCO has identified the following key strategic priorities:

- i. Conduct FSCO's activities in accordance with risk-based principles.
- ii. Continuous improvement in the delivery of our services.
- iii. Foster a coordinated national approach to regulatory issues.

We agree and commend FSCO for adopting a culture of transparency, partnership, dialogue and collaboration with stakeholders, especially in the early stages of policy development.

The following specific comments relating to these priorities are in respect of the areas that coincide with the priorities of Advocis and that directly impact our members.

Upgrade the licensing and compliance information systems to better identify companies and intermediaries that pose the greatest risk to financial services businesses in Ontario.

We believe that it is important to identify the companies and intermediaries that pose the greatest risk *to consumers* in Ontario.

Closely monitor the implementation of the International Financial Reporting Standards (IFRS). Also, work with stakeholders to ensure they are aware of the accounting changes and of their obligations.

We have a keen interest in this issue and would like to work closely with FSCO as you consider what implications the new IFRS will have on financial advisors, if any, when providing advice to consumers on different financial products offered by different insurance companies.

Implement the Joint Forum framework on harmonized point of sale disclosure for Individual Variable Insurance Contracts (IVICs, also known as segregated funds) and mutual funds to ensure consumers are provided with easily understandable information on the risks and benefits of these investment products at the time of purchase.

Advocis has been actively participating with FSCO in its efforts through the Joint Forum to harmonize point of sale disclosure for IVICs and mutual funds. We will continue to work with you and the CCIR to ensure a smooth transition to new point of sale disclosure requirements.

Continuous improvement in the delivery of our services

Identify opportunities to enhance stakeholder engagement in the pension policy development process
and

Provide input into the development of any legislation and/or regulations that may be adopted as a result of recommendations from the Ontario Expert Commission on Pensions (OECF) report.

Advocis participated in Ontario's review of the Ontario pension system in its submission to OECF dated November 21, 2007. Our members provide retirement planning and investment advice to employees with pension plans and many of our members establish and administer pension plans for businesses.

Advocis has established a Pension Task Force whose mandate is to provide public policy advice to interested stakeholders, in particular governments and pension regulators. The main objectives of the Pension Task Force are to promote a sound pension system in Canada and develop solutions to help ensure that pension plans remain sustainable from both an employer and consumer perspective, and to stimulate higher levels of plan sponsorship.

Advocis is uniquely positioned to provide significant input to the pension policy development process, given the services it provides to pension plan recipients and pension plan sponsors and its knowledge of the financial services regulatory framework. Through its thousands of financial advisor practitioners, Advocis is well positioned to provide a balanced perspective and a meaningful contribution. We would like to provide our knowledge and expertise in the pension field as regulators and government continue to consider possible reforms.

We are currently engaging in more research in the pension policy area which will identify changes to policies and regulations that would encourage small and medium sized firms to contribute to defined contribution plans and will examine barriers and impediments to establishing and maintaining pension plans which exist and incentives that would encourage

participation by small and medium sized firms. We will provide more detailed recommendations to regulators and governments once our research is completed.

We believe that the government and regulators should broadly examine the entire retirement income system in order to have a more complete understanding of how to improve retirement savings for all Ontario citizens.

Foster a coordinated approach to regulatory issues

We commend FSCO for supporting the development of harmonized regulatory solutions through its participation with national organizations such as the CCIR, the Joint Forum, the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Insurance Services Regulatory Organizations (CISRO). Efforts in these organizations will lead to a greater degree of consistency in the manner in which financial services intermediaries are regulated across Canada. Advocis has participated with FSCO in its efforts through these national organizations.

We have noticed that while there has been much progress on developing, through these national organizations, a harmonized approach to regulation, when it comes to implementation, each province tends to develop a unique regulatory regime which does not mirror the harmonized solution proposed by the national organization. One example of this is the regulation of the incidental sale of insurance (ISI). Even minor differences in form and timing in the implementation of new regulatory initiatives poses significant challenges for Advocis members as we are a national body attempting to achieve a consistent approach to practice standards for all of our members across Canada.

We believe it is important that individual regulators within these umbrella organizations follow the recommendations, where appropriate and applicable in their respective jurisdictions, if national harmonization is to be achieved. We suggest that FSCO, as a leader in these organizations, develop formal standards and guidelines to ensure that a harmonized approach is taken, where appropriate. If this does not occur, it defeats the main objectives of these initiatives and dilutes the effectiveness of coordinating regulatory bodies. In addition, it creates an uneven playing field as intermediaries in some jurisdictions are regulated differently than intermediaries in other jurisdictions within Canada.

Joint Forum

Implement the Joint Forum's 2009-2012 Strategic Plan

Advocis provided its input to the Joint Forum regarding the renewal of its three-year Strategic Plan. The Joint Forum has made considerable progress in dealing with cross-sectoral problems, attributable in large part to their general acceptance of a principled approach to dealing with issues. We would like to see regulators focus their efforts on identified cross-sectoral problems that pose real risks to consumers and not expend scarce regulatory resources on perceived problems. At this time we are not aware of any such major problems.

Promote and support consumer education initiatives to improve the financial literacy of consumers

Professional financial advisors and financial planners are a vital component of the financial services sector. They help Canadians save, invest and plan intelligently. Financial advisors and financial planners have a key role in educating consumers on financial matters and Advocis

believes strongly in improving the financial literacy of Canadians. It is likely that no one spends more time explaining financial planning, products and services, and educating consumers about financial matters, than do financial advisors and planners.

Advocis believes it has a key role to play in improving financial literacy and would like to work with FSCO as it promotes and supports consumer education initiatives to improve the financial literacy of consumers. Advocis has been engaged with various aspects of the education system relating to financial matters. We would welcome opportunities to work with FSCO in its efforts to improve the financial literacy of Canadians and agree that consumers need to become active participants so that they are educated about their rights and responsibilities regarding their financial decisions (page 3 of the Draft Statement of Priorities).

CCIR

Encourage the insurance industry to develop and implement sound governance practices, standards and guidelines within their organizations

We support the CCIR and FSCO's goal of supporting industry association efforts promoting adoption of best practices. We agree with an approach which involves regulators supporting the development and implementation of governance practices, standards and guidelines throughout the industry which, in turn, will give rise to high standards of market conduct performance and compliance, so long as it is principles-based.

The CCIR, in its Strategic Plan 2008-2011, has as one of its strategic initiatives: *"Review, with CISRO, the regulation of managing general agencies, wholesale agencies and insurance adjusters to identify and address risks to consumers, regulatory gaps, and legislative and regulatory barriers."*

Should this project, to be initiated by the Agencies Regulation Committee of the CCIR, become active, we would like to be consulted at an early stage as this project has the potential to have a significant impact on a large number of Advocis members.

In closing, we would be pleased to discuss our comments with you and look forward to working with FSCO to support its mandate of providing regulatory services that protect the public interest and enhance public confidence in the regulated sectors. If you have any questions, please do not hesitate to contact us.

Yours sincerely,



Greg Pollock
President and CEO



Kristan K. Birchard
Chair, National Board of Directors