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Brendan Hart, Policy Counsel  
Member Regulation Policy,  
Investment Industry Regulatory Organization of Canada  
Suite 1600, 121 King Street West  
Toronto, Ontario, M5H 3T9

Dear Mr. Hart:

RE: Proposed Financial Planning Rule

We are writing on behalf of Advocis, The Financial Advisors Association of Canada, to provide you with our comments on the Investment Industry Regulatory Organization of Canada (IIROC) proposed Financial Planning Rule.

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.

Our members represent life and health insurance licensees, and mutual fund and securities registrants who provide a full range of financial services, including estate and retirement planning, wealth management, risk management and tax planning. A significant proportion of our members have or are in the process of earning professional financial designations, including Chartered Life Underwriter and Certified Financial Planner. Most of our members are insurance licensed. Close to 70% are also mutual fund licensed, and fewer than 10% are also securities-licensed. Most of our members are individuals who carry on business as either sole proprietors or independent, small incorporated businesses.

Only a small proportion of Advocis members operate as *employees* of financial services firms such as insurers or securities or mutual fund dealers. The great majority of Advocis members who work with IIROC Dealer Members and who offer financial planning services to clients of Dealer Members are in a principal-agency relationship with the dealer. As well, in most cases where such an Advocis member provides financial planning services to a client of a Dealer Member, the relationship with respect

to financial planning exists solely between the financial planner and the client, and does not involve the Dealer Member.

## **Consultation Process**

We believe that the issuance of a proposed Financial Planning Rule by IIROC is premature. Any approach to the regulation of financial planning should follow a thorough review and consultation process that involves all relevant stakeholders.

Financial advisors, professional financial planners and widely-recognized professional associations are essential participants in such a process.

An essential element in a proper consultation process is that sufficient time should be afforded to stakeholders to review the proposed initiative and prepare a response. A thirty day comment period is not sufficient for a meaningful consultation process.

We believe that rulemaking by SROs should have followed the completion by senior regulators of a thorough review and consultation process. The regulation of financial planning has implications for a wide range of participants in the financial services marketplace. Financial planning activities are undertaken by professional financial advisors who are insurance, securities and mutual fund licensed, and who hold designations granted by professional associations. It makes no sense to us for the process to begin with the issuance of a rule by one SRO.

It appears to us that SROs such as IIROC are not always sufficiently disposed to consult stakeholders that are not SRO members, at an early stage in policy development. Organizations such as Advocis that represent financial advisors and financial planners, and professional organizations and that are involved in financial education and the development and administration of professional financial designations, should be consulted at an early stage in the policy development process.

## **General comments**

Financial planning is defined very broadly in the proposed Rule, as a comprehensive process of determining how clients can meet their goals through the management of financial resources. The Definition of Financial Planning in Section 2 of the proposed Rule goes on to state that financial planning “may encompass some or all of budgeting and planning; investments; tax; educational expenses; risk management; retirement; and estate planning.”

The proposed Rule, in requiring Dealer Members to supervise all financial planning activities provided to clients by personnel, whether employees or agents, extends far beyond the scope of the business of an investment dealer that deals in stocks, bonds and mutual funds. The proposed Rule requires Dealer Members to supervise financial planning activities that are not related to the business of the Dealer Member and the services and products that it offers the client.

Financial planning leads to the development of strategies. Clients may implement some of the strategies through the Dealer Member as intermediary. Such trading activity is already subject to supervision by Dealer Members, through the Know-Your-Client and Suitability rules.

We are concerned that the proposed Rule will create conflicts of interest for Dealer Members that supervise financial planning activities of personnel who are not employees. Dealer Members may be inclined to influence the financial planning process in their own institutional interest, to the detriment of the client and of the agent. As such, the proposed Rule could have an undesirable impact on the integrity of the financial planning process, and on the strategies and choices of financial products that are available to clients. As well, some Dealer Members may simply consider that they lack the expertise to supervise particular types of financial planning activities, or to supervise planning that involves particular financial products, and this is likely to affect the financial planning process or the product choices that are available to implement a financial plan.

### **Proposed Rule Does Not Further IIROC Regulatory Objectives**

According to the Notice, the purposes of the proposed Rule are to protect investors, foster fair, equitable and ethical standards and promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith.

There is nothing in the Notice to indicate why the proposed Rule actually is required to further the above-noted purposes. Neither is there any suggestion in the notice, concerning how the existing state of affairs evidences inadequate investor protection, inequity or bad practice that requires the remedy offered by the proposed Rule.

The Notice also states: “The proposed Rule does not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC’s regulatory objectives. It does not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized.”

The above language suggests that IIROC is committed to regulating only when necessary, and only to the extent necessary. It suggests a commitment to imposing costs and restrictions on market participants only when they are necessary and proportionate to the burdens they may impose.

The quoted statement, which sets out basic principles of regulatory restraint that IIROC is committed to following, appears to be little more than a boilerplate statement that is not really supported by the analysis concerning the proposed Rule. We fail to see how requiring IIROC Dealer Members to supervise all financial planning activities of personnel who are not employees, and requiring such supervision of financial planning activities that are not related to the business of the Dealer Member and to the financial

products available through the Dealer Member, has been shown to be necessary in furtherance of IIROC's regulatory objectives.

We note that the Notice states that the proposed Rule "does not impose costs or restrictions on the activities of market participants." However, the Notice does not refer to any assessment of the impact that the proposed Rule would have market participants, nor any cost-benefit analysis. We believe that the proposed Rule could in fact have a significant impact on agents of Dealer Members who provide financial planning. Some Dealers Members might well rely on the Rule as a basis for restricting the financial planning activities of their employees and agents, or by mandating particular approaches and methods of financial planning. That certainly could impose costs or restrictions on market participants. We accordingly urge IIROC to revisit the question, and to assess what costs or restrictions the proposed Rule would impose on agents, and whether imposing such costs is necessary and proportionate.

### **What is the rationale for requiring Dealer Members to supervise financial planning?**

Advocis strongly supports the establishment of proficiency requirements for individuals who hold themselves out as financial planners. Individuals who hold themselves out to provide financial planning services to clients of IIROC Dealer Members should be proficient, and should meet minimum proficiency standards. We believe that if government and SROs are going to establish proficiency standards for financial planners, they should consult with industry stakeholders and should draw upon standards that have been developed by professional associations such as Advocis.

However, the proposed Rule has two main elements: Our main concerns are with the second element of the proposed Rule, which requires IIROC Dealer Members to supervise all financial planning activities of personnel, who provide financial planning services to clients of the Dealer Member.

We do not believe that IIROC has made a strong case for requiring its Dealer Members to supervise all financial planning activities provided by their personnel, whether employees or agents, to clients of the Dealer Member. We consider that it is entirely appropriate for IIROC Dealer Members, on their own initiative, to supervise the financial planning activities that their *employees* provide to clients on their behalf. However, we do not consider that IIROC has made a case for requiring its Dealer Members to supervise all financial planning activities of agents who provide financial planning services to clients.

IIROC has not presented any substantial rationale for requiring that the financial planning activities of individuals who are not employees of Dealer Members should be supervised by Dealer Members. The rationale offered by IIROC for imposing more regulation, and specifically for requiring IIROC Dealer Members to supervise all financial planning activities undertaken by non-employees, is that "there is currently little regulation in this area." In our view, the fact that IIROC has not previously had a

financial planning rule in place is not persuasive reason for imposing a far-reaching new prescriptive requirement.

There is no suggestion in the Notice that there have been investor complaints relating to financial planning, or that there has been a failure of investor protection in relation to financial plans that requires this regulatory response. We are not aware of notorious cases of inadequate or unscrupulous financial planning that would have been prevented by supervision by a Dealer Member. (However, investor complaints about unsuitable investments are common.)

The Notice states that “the benefits associated with the establishment of a regulatory framework for financial planning services are significantly greater” than the anticipated additional costs. However, the Notice does not actually describe what the expected benefits are. Furthermore there is no information or analysis provided concerning the likely impact of the proposed Financial Planning Rule on those individuals who actually provide the financial planning services, or the impact on their clients and the choices available to them.

There is no discussion in the Notice of *why* Dealer Members should have the responsibility of supervising the wide-ranging financial planning activities of professional financial planners who are not their employees. IIROC has not identified any aspects of the relationship between the Dealer Member and the Agent, or any characteristic of the financial planning activity that takes place, which makes it appropriate and necessary that the activity should be supervised by the Dealer Member.

The Dealer Member is an intermediary through whom the client is able to buy and sell securities. The agent establishes the financial planning relationship with the client, and starts by collecting personal information about the client’s financial situation and goals. Any advice provided by the agent to the client with regard to the purchase or sale of securities through the Dealer Member will be subject to Suitability and Know-your-Client obligations that the agent is obliged to meet. As well, the Dealer Member is obliged to supervise the agent’s interaction with the client to the extent that it specifically relates to the purchase and sale of securities. However, the activities of the agent *vis a vis* the client may involve financial planning activities and other activities, that involve financial products that do not involve the Dealer Member. Therefore, the ultimate question is: what justification is there for requiring that activities that do not involve the Dealer Member be supervised by the Dealer Member?

The Notice makes much of the alleged absence of an existing regulatory framework, for the regulation of financial planning. The suggestion appears to be that IIROC’s Rule should fill this regulatory vacuum, regardless of whether or not the activities in question are directly relevant to the mandate of IIROC or whether there is any evidence of abuses or problems which require regulation to correct. However, there is no evidence that we are aware of that the financial planning activities of agents, which are not already subject to supervision by the Dealer Member, take place in a regulatory vacuum. Many financial advisors that are in an agency relationship with an IIROC

Dealer Member are insurance licensees, and to the extent that their activities relate to specific insurance products, insurance regulation comes into play. More significantly, most financial planners hold professional designations that are issued by widely-recognized professional associations. The financial planners' designations evidence their proficiency in financial planning, and their membership in good standing in a professional body that maintains standards of integrity, professional conduct, competence and continuing education evidences adherence to standards of professionalism.

### **Should Dealers supervise financial planning activities provided by non-employees?**

Our main concern with the proposed Rule is that the Rule will require Advocis members who are in an agency relationship with an IIROC Dealer Member, and are not employees of the IIROC Dealer Member, to submit every aspect of their financial planning practice to supervision by the IIROC Dealer Member they deal with.

The financial planning activities of an Advocis member who is in an agency relationship with an IIROC Dealer Member may only involve the dealer in a small way. Financial plans often involve services and strategies that cannot be implemented through the IIROC Dealer Member. Some of the financial planning will lead to strategies that involve insurance products that are subject to regulation by insurance regulators. The actual advisory relationship will generally be strictly between the financial planner and the client, and will not involve the IIROC Dealer Member. However, the Rule as drafted subjects the Advocis member's entire financial planning practice to supervision by the IIROC Dealer Member. The IIROC Dealer Member will be responsible for supervising the Advocis member's practices and procedures relating to financial planning. Dealers could require that financial plans be approved by their compliance department before they can be presented to a client. The Advocis member will be required to document all aspects of the financial planning process in accordance with standards established by the IIROC Dealer Member. Even the software the Advocis member uses in connection with financial planning will have to be approved by the IIROC Dealer Member.

Because IIROC Dealer Members will be responsible for supervising financial planning activities, it can be expected that they will have considerable influence over the financial planning activities and the choices of financial products that financial planners recommend to clients.

We believe the proposed Rule would be unduly intrusive on the financial planning relationship between financial planners who are not employers of Dealer Members, and their clients. Such a Rule will have a negative impact on the financial planning process and undermine the independence of the financial planner and could bias the content of financial planning advice given to a client.

We submit that financial planning is essentially a multi-disciplinary process that is intended to develop strategies that clients may implement in a wide range of ways. Self-

regulatory organizations and securities dealers focus their regulation and their regulatory compliance on transactions in the securities products that the dealers deal in. There is no evidence that SROs and securities dealers have or could be expected to acquire the expertise or the capability to supervise a complex, multidisciplinary financial planning process in a way that serves the interests of clients.

Given the lack of evidence of a pressing problem, failure or investor protection or regulatory gap, we do not believe there is any justification for requiring IIROC Dealer Members to supervise all financial planning activities of personnel.

## **Recognition of Designation-granting Associations**

The discussion in the Notice concerning the proposed Financial Planning Rule refers to current MFDA Rule 1.2.1(d), which contemplates that financial planning services can be provided outside of the MFDA dealer “through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association”. The IIROC Notice notes with tacit approval that the MFDA is removing its Rule that recognizes individuals who are “subject to the rules and regulations of a widely-recognized professional association” as performing regulated financial planning.

We note that the amendment to MFDA Rule 1.2.1(d) has only been *proposed*, and has to our knowledge not been finalized. The proposed change is also controversial. We do not think the MFDA has made a case for eliminating this provision, which recognizes the role of professional associations in establishing standards and regulating financial planners. (The only reason offered by the MFDA for the proposed removal of this provision is that “(t)o date, the MFDA has not designated any organization as a ‘widely recognized professional association’.”) We believe IIROC should recognize the important role that designation-granting professional associations can play. We would in fact urge the IIROC to avoid imposing needless regulation on individuals who meet proficiency standards and are “subject to the rules and regulations of a widely-recognized professional association.”

We note that in the province of British Columbia, a person wishing to be registered as a trading partner, director or officer or salesperson, who intends to hold herself or himself out as a “financial planner” or by similar title, or as having proficiency in financial planning, is required to be licensed by the Financial Standards Council of Canada to use the designation “Certified Financial Planner” or “CFP”. The British Columbia Securities Commission has set out in its policy statement on holding out, a list of additional designations including the Chartered Life Underwriter (CLU) designation, in respect of which it is prepared to consider applications for approval on a case-by-case basis. (See: BC Securities Policy 31-601, Registration Requirements, subsection 4.6 - Holding Out. ) We agree with that approach, which recognizes the role and responsibilities that professional associations can play in establishing appropriate proficiency standards. We encourage IIROC to consider this approach, should IIROC

have concerns about individuals that purport to be financial planners but do not hold an accepted designation.

## Proficiency Requirements

Section 2 of the Guidance Note sets out minimum initial proficiency standards for individuals who provide financial planning services. The section divides various professional designations into two tiers. The holding of certain designations may be taken by a Dealer Member as proof of proficiency, while certain other designations may be taken as an indication of proficiency but the Dealer Member is required to consider other education and experience in determining whether the individual meets the minimum proficiency standard.

Section 2(a) provides that proficiency may be demonstrated by the individual's completion of the Canadian Securities Course and the Professional Financial Planning course, or by the individual's holding of one of a number of "recognized financial planning designation(s)", including Certified Financial Planner (CFP), Personal Financial Planner (PFP), Planificateur financier (Pl.fin), or Registered Financial Planner (R.F.P.) Section 2(b) identifies other designations which, when "combined with other education or experience", may be taken to demonstrate proficiency. The designations listed in the second tier include Chartered Financial Consultant (CH.F.C.), Chartered Life Underwriter (CLU), Chartered Financial analyst (CFA), Certified General Accountant (CGA), Certified Management Accountant (CMA) and Chartered Accountant (CA).

IIROC does not indicate in the Notice how the classification of designations into two tiers was arrived at. The Notice does not explain the basis for assigning designations to the two tiers, and does not set out any criteria for determining how a designation is indicative of proficiency. There is no reference in the Notice to any research or analysis to support the establishment of the hierarchy of designations.

We note that the proposed Guidance Note that accompanies the proposed Rule identifies the Best Practices Manual for Financial Advisors, sponsored by Advocis, as setting out standards that Dealer Members may draw upon in developing policies and procedures for the supervision of personnel who provide financial planning services. We believe that the Best Practices Manual for Financial Advisors is a particularly useful tool that assists and guides *advisors* in their dealings with clients as it relates to the financial planning process and other key aspects of financial advice.

We believe that the two Advocis designations included in Section 2(b), namely, the CLU and the CH.F.C. should be included in the first tier in section 2(a).

The CLU and CH.F.C.designations are held by professional financial advisors specializing in financial planning in the areas of income replacement, risk management, estate planning, and wealth transfer. In addition to the foundational education program that the CLU shares with our CFP education program, candidates are required to successfully complete courses in Advanced Taxation, Law and Advanced Planning.



A third Advocis designation, the Registered Health Underwriter (RHU) is earned by professional financial advisors specializing in living benefits, including income replacement and risk management solutions for individuals, business owners and professionals.

In addition to the educational component of the programs, CLUs and RHUs who are members of Advocis are required to adhere to a code of ethics and are subject to Continuing Education requirements to help keep their designation current and relevant to practice.

We urge IIROC to assign the CLU and CH.F.C. designations to the first tier of designations, as they are indicative of substantial proficiency in financial planning, and include content that builds on and is complementary to the content of the other designations that are currently listed in the first tier. As well, we submit that the RHU designation should be added to the designations in the second group, under section 2(b).

Advocis appreciates this opportunity to provide comments on the proposed Financial Planning Rule. We urge the IIROC to reconsider those provisions of the Rule that would cast a net over all financial planning activities undertaken by independent financial planners who are in a principal agent relationship with IIROC members

Sincerely,



Steve Howard, CA  
President and CEO  
Advocis



Teresa Black Hughes CFP, CLU, RFP, FMA, CIM  
Chair  
National Board of Directors, Advocis

c.c.

Jean St-Gelais, Président et directeur général, Autorité des marchés financières

William Rice, Chair, Alberta Securities Commission

Doug Hyndman, Chair, British Columbia Securities Commission

David Wild, Chair, Financial Services Commission of Saskatchewan

Donald Murray, Chair, Manitoba Securities Commission

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Donne Smith, Chair, New Brunswick Securities Commission

H. Leslie O'Brien, Chair, Nova Scotia Securities Commission

Winston Morris, Superintendent of Securities, Newfoundland and Labrador

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