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January 19, 2009

Dr. Bob Christie
Chair
Joint Forum of Financial Market Regulators
5160 Yonge Street
17th Floor, Box 85
North York, Ontario M2N 6L9

Dear Dr. Christie,

Re: Joint Forum Strategic Plan 2009-2012

Advocis, the Financial Advisors Association of Canada, appreciates the opportunity to provide input as the Joint Forum prepares to renew its three-year strategic plan. We believe that stakeholders and regulators, working jointly, can achieve far superior results for consumers and for the financial markets.

Advocis is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our members are primarily independent owners and operators of small businesses and sales representatives of medium and large-size financial services companies, who provide comprehensive financial planning and investment advice, retirement and estate planning, and employee benefit plans. Our members offer clients a prudent long-term perspective on managing a wide array of financial risks and meeting long-term financial goals. Our members are typically dual-licensed to provide life and health insurance as well as mutual funds and other securities.

Establishing a three-year strategic plan is challenging, particularly given the speed with which change is taking place in the financial markets. In tandem with the change has been the increasingly important role that financial markets and financial products play in the overall health of our domestic and the global economy. The immobilization and dematerialization of securities has provided solutions to the technical barriers that once limited the volume and speed of transactions. It has also benefited consumers as the cost of products, which factor in systemic risks, are adjusted to account for the reduction in failed trades and the subsequent legal actions. The resulting interests in securities allow for the continued creation of innovative investment vehicles and products that professional financial advisors and their clients use in developing, reviewing and revising long term financial plans aimed at providing beneficial owners with financial security and independence. These innovations also place increased stress on

regulators who are under constant pressure to provide the necessary environment that allows market participants to maximize investment opportunities.

Fundamental changes within the financial markets have highlighted the importance of cross-sectoral communications between financial services regulators, as identified problems simultaneously touch on insurance, pension and capital markets. We believe that the Joint Forum must 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.

The Joint Forum has made considerable progress within the last three years in dealing with cross-sectoral problems, attributable in large to their general acceptance of a principled approach to dealing with issues.

The Joint Forum in 2005 released a document entitled *Principles and Practices for the Sale of Products and Services in the Financial Sector*. The purpose of this document was to set out best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services, and to provide consumers with a benchmark to assess the conduct of any financial intermediary with whom they currently have a relationship, or are considering establishing a relationship. Securities and insurance regulators across Canada unanimously endorsed this paper.

The eight principles and practices outlined by the Joint Forum in the paper are:

1. *Interests of the Client*
2. *Needs of the Client ("Know Your Client")*
3. *Professionalism*
4. *Confidentiality*
5. *Conflicts of Interest*
6. *Disclosure*
7. *Unfair Practices, and*
8. *Client Redress.*

In its backgrounder to the *Principles* document, the Joint Forum states that its preference is to develop voluntary principles that intermediaries would adopt. Therefore, it set out to create principles and practices that industry associations and associations representing intermediaries would endorse on behalf of their members. For this reason, the principles and practices are expressed as high-level principles rather than specific details. The Joint Forum states that

"... a benefit of this approach is that they are general enough to dovetail with the existing codes of industry associations and voluntary codes can complement requirements set down by law and can be adapted to changing circumstances more quickly than a statutory code can. Once the principles and practices are widely adopted by industry associations, the Joint Forum is confident that they

will come to be seen as the norm. Competition and market forces will operate to encourage higher standards to the benefit of consumers.”

We fully support the sentiments of this document, however, our experience suggests that the message has not been fully accepted by all regulators and most certainly not by the self regulatory organizations, namely the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC). On a going forward basis, we believe that the Joint Forum must ensure that this general principle is applied with consistency, where warranted.

We believe that the Joint Forum should ensure that principles-based regulation is employed to address identified market failures, information asymmetry, and consumer protection in achieving the desired regulatory outcome. We recognize that there are times when prescriptive policy intervention may be necessary, however, we feel that regulators are not fully utilizing the regulatory tools available to them in achieving policy objectives and are resorting to prescription prematurely. Misplaced prescriptive regulation has the net effect of removing creativity and innovation that market participants can provide. Often, prescriptive regulation is applied as a result of regulators incorrectly identifying problems, failing to consider the least intrusive means of achieving the policy objective, and the markets ability for self-correction in many cases. In cases of consumer protection, information asymmetry or market failure we believe that more coordination is required between, regulators, including SRO's, and market participants in finding the proper regulatory response and solution to properly identified problems. A principles-based approach to regulation is one such means.

We commend both FSCO and 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 directions where stakeholders 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 consultation with consumers, financial advisors and other market participants. This approach has resulted in effective implementation of principles-based regulation as it pertains to managing conflicts of interest in the life and health insurance industry.

Advocis would urge the Joint Forum to revisit its commitment to the use of principles-based regulation to achieve desired outcomes. The core regulatory principles that should guide the actions of regulators are: act only in the case of market failures, information asymmetries or matters of consumer protection. Regulators must identify through detailed consultation and analysis the 'true nature of the problem', 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.

It is also critically important that filing requirements allow regulators to gather information that will help them determine if the policy response has properly identified and corrected the identified problem. Built into every policy instrument should be a

requirement for a five year review. If the evidence gathered through the filing requirements indicate that a policy instrument has not achieved its stated purpose, or has ancillary effects that are harmful or inadvertently restrict market practices, then the policy must be set down for immediate review. The review should consider whether the regulation is justified, needs amendment or should be repealed. As financial markets are increasingly international, it is imperative that we regulate in a manner that encourages innovation and investment without compromising consumer protection. In striking the right balance between investor protection and increased market efficiency there is a need on the part of regulators to properly identify issues and employ a measured response in achieving the desired outcome.

In conclusion, we feel that the Joint Forum has had a positive impact on cross-sectoral issues, but would urge you to continue to focus the limited regulatory resources on dealing with identified problems and through a principles-based approach.

We would be pleased to discuss these matters with the Joint Forum further.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a long horizontal line that ends in a small arrowhead pointing to the right.

Greg Pollock
President and CEO