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Canadian Council of Insurance Regulators  
CCIR Secretariat  
Canadian Council of Insurance Regulators  
5160 Yong Street, P.O. Box 85  
Toronto, ON  
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Dear Mesdames/Sirs:

**Re: CCIR Strategic Plan, 2010-2013**

Advocis appreciates the opportunity to provide input on the Canadian Council of Insurance Regulators' development of a new strategic plan, effective April 1, 2010.

Advocis, The Financial Advisors Association of Canada, is the largest and oldest professional membership association of financial advisors and planners in Canada. Our association was founded in 1906, as the Life Underwriters Association of Canada.

More than ten thousand members of Advocis in Canada provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans and disability coverage, to millions of Canadian households and businesses. Our members are provincially licensed to sell life and health insurance and mutual funds and other securities. Advocis members are for the most part independent owners and operators of small businesses, entrepreneurs who create thousands of jobs in every community across Canada. Advocis members maintain lasting relationships with their clients based on trust. They help clients, young and old, individuals, families and businesses, to set financial goals, manage risks, save consistently and invest prudently.

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

- Advocis' Code of Professional Conduct;
- Guidance on best practices;
- Errors and omissions insurance coverage that protects consumers;
- Professional designations supported by a comprehensive curriculum and rigorous standards – Advocis' Chartered Life Underwriter (CLU) and the Registered Health Underwriter (RHU); and educational support for the attainment of the Certified Financial Planner (CFP); and
- Mandatory competency-based continuing education.

Advocis believes that Canadians should have ample access to professional financial advice, products and services and should be able to choose among a diverse range of financial service providers. Independent-minded, entrepreneurial, small business professional financial advisors provide valuable service to Canadians in delivering professional financial advice, products and services and have a significant place in the financial services sector.

## **CCIR's Mandate and Vision**

Advocis supports the CCIR's mandate of facilitating and promoting an efficient and effective insurance regulatory system in Canada to serve the public interest. We support the vision of the results that the CCIR hopes to achieve: a harmonized and effective regulatory system that protects consumers and enhances confidence in the Canadian insurance marketplace.

Advocis strongly suggests that the CCIR should also explicitly recognize that a public policy priority is an *efficient, effective and competitive* insurance marketplace.

Public policy should recognize the importance of access to affordable professional financial advice in helping Canadians meet their long-term financial goals. No one spends more time with consumers, explaining financial concepts and products, than the financial advisor.

Regulators should ensure that Canadians continue to have access to affordable financial advice that is provided by professional financial advisors in order to help them achieve good financial outcomes and achieve their financial goals over the long term.

## **Consultative Process**

We commend the CCIR for continuing to consult widely 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 the CCIR as a model for undertaking meaningful public consultations with consumers, financial advisors and other market participants. The sharing with industry participants' information such as where consumer complaints are being generated and where the risks could be allows industry to respond and effectively address these risks without necessarily the need for a regulatory response.

## **Need for Robust Harmonization Process**

We commend the CCIR for supporting the development of harmonized regulatory solutions within its own process and through its participation with national organizations such as the Joint Forum and the Canadian Insurance Services Regulatory Organizations. Efforts in these organizations will lead to a greater degree of consistency in the manner in which financial services intermediaries are regulated across Canada so that unnecessary regulatory burdens are not placed on participants who operate in more than one province or who are dual-licensed.

There has been much progress on developing, through national organizations, a harmonized approach to regulation and much time and resources are devoted to it. However, when it comes to implementation, one or more provinces may develop its own regulatory regime that

does not mirror the harmonized solution proposed by the national organization. Industry stakeholders expend a significant amount of effort in a consultation process that results in harmonized recommendations by the CCIR. One example of this is the Three Principles for Managing Conflicts of Interest, which were endorsed by all CCIR and CISRO members but subsequently a few provinces have or are contemplating going beyond this approach and imposing other rules without any significant justification that the principles are insufficient to protect consumers. Other harmonization efforts have provided each jurisdiction with their own toolkit that can be customized to the unique regulatory concerns of that jurisdiction (for example, Incidental Selling of Insurance) demonstrating that a harmonized approach to regulation was not achievable amongst the CCIR members. In this case stakeholders expect that a harmonized approach may not be feasible. However, where all CCIR members agree to a harmonized approach and then individual provinces move in a direction contrary to the harmonization initiative, it makes the industry less effective and less efficient in delivering the necessary advice, services and products to consumers. If a regional consumer protection issue arises that warrants a different approach, Advocis is supportive and would work collaboratively with the regulators to develop an appropriate regulatory response. However, without a substantive rationale or evidence that consumers are being negatively impacted by an agreed upon harmonized approach, we believe that CCIR members should support the harmonized approach.

We strongly urge the CCIR to work on developing mechanisms which will put in place a more robust harmonization process so that not only is a harmonized approach to regulation recommended but that, in practice, each jurisdiction adopts and implements that recommended approach. We appreciate that each province is free to regulate as it deems appropriate but the CCIR and other national organizations need to develop formal standards, guidelines or processes so that the harmonized approaches are, at the end of the day, implemented. If this does not occur, the main objectives of these initiatives are defeated and the effectiveness of coordinating bodies is diluted. In addition, it can lead to an unlevel playing field as intermediaries in some jurisdictions are regulated differently than intermediaries in other jurisdictions within Canada.

Finally, members of the CCIR need to develop mechanisms so that they can inform and advise industry participants when they want to go further than the harmonization solution. In such situations, the regulator should explain the reasons for their desire to implement their own unique regulatory solution and provide an opportunity for stakeholders to provide their input early on in the policy development process so that effective quality regulation can be achieved.

### **Harmonization of Continuing Education and Errors & Omissions Insurance is Needed**

All provinces have certain continuing education requirements for life insurance licensees except for the Atlantic Provinces. We believe that the CCIR should examine whether continuing education requirements should be harmonized across all jurisdictions including the recommendation of implementing such requirements in the Atlantic Provinces. Advocis supports educational requirements that allow regulators and consumers to have confidence that agents have the necessary knowledge, skills and abilities, stay compliant with the changing regulatory framework and better assist their clients in developing the financial literacy and necessary knowledge to make informed decisions about their financial future.

We would be pleased to assist you in such a project.

Advocis also recommends that the CCIR should examine harmonizing of errors and omissions insurance requirements across all jurisdictions to ensure that consumers are adequately protected and regulatory burdens on financial advisors are minimized.

## **The Changing Regulatory Environment Resulting from the Financial Crisis and its Impact on the Insurance Industry and Consumers**

The CCIR will take into consideration the changing regulatory environment resulting from the financial crisis or downturn and its impact on the insurance industry and consumers.

As part of this, it will take into consideration market uncertainty and risks and should carefully assess how market risk and economic uncertainty and the economic downturn translates into risks in the sale and distribution practices for insurance as it is these risks for which the CCIR is responsible and for which it is mandated to regulate.

When developing risk-based strategies to address current economic conditions, the CCIR needs to determine what risks, for which it is responsible, have been created (if any) or increased as a result of current economic conditions for which it is responsible. Market uncertainty should not necessarily be used as a basis for re-regulation. A clear understanding and assessment of the risks needs to be undertaken using carefully chosen regulatory tools. 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.

If a risk has been identified, the CCIR needs 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 (through guidance or otherwise) or whether additional regulation or enforcement of existing regulation needs to be enhanced.

## **Principles-Based Regulation (PBR) and the Effective Use of Associations**

Advocis believes 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.

A principles-based approach to regulation requires regulators to adopt a sound approach to regulation, one based on detailed consultation with stakeholders. At the same time, stakeholders must take an active interest and participate in the formulation of regulation and rules. Advocis believes in a principles-based approach to regulation where stakeholders must be proactive and a partner with regulators in achieving a progressive, vibrant and competitive marketplace.

The guiding core regulatory principles that should direct action on the part of 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 PBR responses unless there is clear evidence that absent a prescriptive policy response, harm will be done to the market or consumers.

In a PBR environment the idea is for the regulated industry itself to design the detailed rules and procedures that will permit the standards set by the principles to be achieved. To help firms determine how best to meet the expectations under PBR, the Financial Services Authority in the United Kingdom, for example, has turned to the regulated sector to provide sector specific guidance. It is expected that such guidance would come from industry associations, professional bodies or groups of firms.

***We urge the CCIR to continue to engage industry associations and professional bodies such as Advocis to develop the guidance to meet the expectations for a given principle.***

The shift to PBR does not result in the end of regulatory oversight but rather it recognizes the specialized experience and knowledge that industry can provide and places increased responsibility on the regulated community itself to provide solutions that are consistent with the general principles established by the regulator. We urge the CCIR to provide that increased responsibility to Advocis and other industry associations.

Flexible, PBR that focuses on desired outcomes offers a smart alternative to the rule-bound approach designed for large compliance departments and employee sales-forces. Emphasis should be placed on compliance with general principles, and less emphasis on detailed rules, in order to achieve desired outcomes. It is important for regulators to work with industry and professional associations to develop standards that protect the consumer. This approach promotes the professionalism of financial advisors, and results in a smarter, more flexible and more efficient approach to regulation.

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) 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.

These principles are being effectively implemented by insurance companies and agents. “The Final Public Report: Review of Implementation of the Three Principles for Managing Conflicts of Interest” of the IPRC of CCIR and CISRO dated December 2008 confirms this view. The survey conducted by the IPRC found that “most companies have systems of corporate governance and internal controls to manage conflicts of interest as they relate to the principles...The content of the policies are adequate for managing conflicts of interest and properly monitored for adherence.” The survey found that there was a high level of implementation at the agent level – that the majority of agents were providing the necessary disclosure to make an informed decision. The Report conclusions were that support of the three principles are high and are widely recognized in the marketplace. It also concluded that “It appears that no further steps by regulators are necessary at this time to promote general acceptance, except to encourage associations and insurers to increase their efforts in support of the three principles”.

A major contributing reason for the success of this initiative is that the industry was tasked with developing the specific guidelines and requirements in order to ensure the principles are adhered to, and the industry responded quickly. The insurance industry has the flexibility to

devise the most appropriate guidelines that will result in the highest degree of adherence and compliance. Advocis strongly believes that this approach works for consumers, advisors, companies and regulators. The CCIR should look for areas where specific guidelines can be implemented by the industry or industry associations such as Advocis.

## **Regulatory Recognition of Industry Practices**

Another aspect to the PBR approach to regulation is providing regulatory recognition to industry guidelines and practices. Industry Guidance is information created, developed and freely issued by a person or body, other than the regulator, which is intended to provide guidance to the industry about the provision of the regulation. The CCIR should examine the use of Industry Guidance in the Canadian insurance market and distribution system. The CCIR should examine providing regulatory recognition to Industry Guidance if it is consistent with an established regulatory principle. In our view, this will in no way lessen the existing regulatory authority and regulatory authority of insurance regulators but will rather result in more efficient and effective regulation.

This allows industry to make use of its own expertise and results in more effective and efficient regulation. PBR envisions organizations such as professional bodies and trade associations playing a significant role in helping the industry develop suitable practices to meet their regulatory obligations.

When industry is the developer of guidance, the resulting guidance often has a closer fit with commercial good practice given that industry has a more detailed understanding of the sector concerned. In turn, that can bring reduced compliance costs and, therefore, more efficient delivery of the regulatory benefits that the regulator is seeking to secure.

It is our view that, to date, regulatory recognition by insurance regulators has only occurred on an ad hoc basis. For example, the CCIR has provided regulatory recognition of the CLHIA Guideline G-2 Individual Variable Insurance Contracts Relating to Segregated Funds. We strongly urge the CCIR to consider a more formalized process of providing regulatory recognition to other Industry Guidance, including guidance developed by Advocis.

For example, the BC Insurance Council has given regulatory recognition to Approved Designations (the CFP, CLU, RHU, FCIA, FLMI and CEBS) for purposes of determining the number of technical hours of continuing education that are required to maintain one's life and health insurance license. A licensee who has a CLU in good standing (which includes completing continuing education requirements) is "exempt" from Council's continuing education requirements. This gives appropriate recognition to the CE obtained by the designee. We would like to explore how the CCIR can give appropriate regulatory recognition to professional designations such as the CLU, RHU and CFP.

The CLU Institute has recently developed a CE Accreditation Tool and CE Accreditation Service which is leading edge and sets a new standard for the accreditation of continuing education courses. We urge the CCIR to examine the provision of regulatory recognition to the CLU Institute's new CE Accreditation Tool and CE Accreditation Service.

The CE Accreditation Service is an impartial third-party review of CE programs to ensure a clear standard of educational quality has been met. An Accredited CE program has been reviewed against the Practice Guidelines for Financial Advisors and Planners<sup>1</sup> and has been determined to be current and relevant for financial advisors and planners. The CE Accreditation tool will provide protection for the Canadian consumer of financial services as the CE that will be accredited will help financial advisors and planners to:

- Develop their knowledge, skills and abilities;
- Stay compliant with the changing regulatory framework; and
- Better assist their clients in developing the financial literacy and necessary knowledge to make informed decisions about their financial future.

To have an accredited CE program will mean that it has met a clear standard of educational quality, has been reviewed against the competencies contained in the Practice Guideline and is relevant to today's financial advisors and planners<sup>2</sup>. We believe that this should be the standard against which all continuing education programs are reviewed for accreditation purposes.

Professional associations play a significant role in helping the industry develop suitable practices to meet their regulatory obligations. The CCIR should examine having a formal process to provide appropriate regulatory recognition to Industry Guidance that is created. We would be pleased to discuss this issue with you.

### **Encroachment of Securities Regulation on the Insurance Regulatory Framework**

A diverse financial services sector is essential to ensuring that consumers continue to have access to the professional financial advice they need. Many Advocis financial advisors are dual-licensed – that is, they are provincially licensed to sell life and health insurance and provincially licensed to sell mutual funds and other securities. Access to professional financial advice is threatened by the increasing burden of detailed, compliance-heavy, rules-based securities regulation that typically favours the business model of large financial entities. Increasing compliance costs are more easily borne by large financial institutions and their compliance departments, which benefit from economies of scale, than by smaller enterprises.

Professional financial advice is becoming less affordable and less accessible for Canadians. The increasing cost of providing financial services to Canadians by financial advisors threatens to make professional financial advice unaffordable. All regulated financial service providers are obliged to cover a wide range of costs if they are to remain in business. They have to pay for legal and regulatory advice, compliance staff, regulatory fees, SRO membership, increased liability risks, time spent explaining forms to clients, etc. The increasing regulatory burden and cost of compliance for smaller market participants is contributing to increased concentration in

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<sup>1</sup> By working with a Development Group and an External Review Group, the Practice Guidelines for Financial Advisors and Planners, the CLU Institute developed the Practice Guidelines for Finance Advisors and Planners. The Practice Guidelines include a Practice Competency Framework and a Practice Behaviour Framework which jointly delineate the knowledge, ability and behaviour that are necessary for financial advisors and planners to perform their job duties and associated tasks both competently and ethically.

<sup>2</sup> The Continuing Education Accreditation Advisory Council, an independent body, will maintain and develop the Practice Guidelines and review the criteria for CE Accreditation on an ongoing basis in order to ensure that emerging issues are carefully considered and that the review instrument content and procedures remain valid, reliable and fair.

the delivery of financial products and services. Ever fewer, large financial entities offer consumers less choice, particularly in smaller communities.

Financial services regulators need to ensure that:

- Regulatory initiatives do not place an unfair burden of regulation on one segment of the industry versus another and maintain a level playing field at all times; and
- New regulations are examined carefully to determine if they have major implications for consumer choice.

Flexible, PBR that focuses on desired outcomes, which is more readily used by insurance regulators, offers a smart alternative to the rule-bound approach designed for large compliance departments and employee sales-forces. We would like to see securities regulators adopt the PBR approach in order to achieve more effective quality regulation which has been working extremely well for all life insurance products, including segregated funds.

Segregated funds are subject to three different regulatory regimes, by two different levels of government for different regulatory purposes: by federal legislation/regulation as it pertains to solvency and corporate governance of life companies, by provincial securities legislation/regulation as it pertains to the underlying fund and by provincial insurance legislation/regulation as it applies to market distribution, consumer protection and generally applicable elements of all life insurance contracts. Care should be exercised to ensure that a system that is working well is not disturbed.

All life-insurance products, including segregated funds, are appropriately regulated under the provincial insurance regulatory framework. No insurance products, including segregated funds, should be transferred to the securities regulators for regulatory purposes of market conduct and consumer protection, as all insurance products are appropriately regulated for those purposes at present. The Canadian Securities Transition Office (CSTO) has indicated that one of the issues that the CSTO is studying is the ability to regulate insurance-based investment products such as segregated funds. We have made a submission to the CSTO wherein we stress that insurance products are appropriately regulated by provincial insurance regulation and, in developing a new securities act and regulator, the CSTO should ensure that the current regulation of life insurance products, including segregated funds, remains intact. We urge the CCIR to ensure that life insurance products, including segregated funds, remain under the regulatory jurisdiction of insurance regulators.

We are currently participating in the CCIR Intermediary Regulation (IVICs) Project which is undertaking a review of the quality of compliance monitoring by insurance companies of their intermediaries, including their compliance oversight of suitability and needs analysis for IVICs. We are pleased to work with the CCIR on this important initiative.

In our view, the current regulatory framework for segregated funds is appropriate and has resulted in a high degree of consumer protection. The existing regulatory jurisdiction between insurance and securities regulators should remain intact.

## **Aging Insurance Agent Force**

The CCIR identified in its Strategic Plan for 2008-2011 that there is a changing demographic in Canada including that the average age of agents and brokers is increasing. Advocis would like

to engage the CCIR in a dialogue about possible steps that could be taken to encourage new entrants into a financial advisors career and in ensuring that barriers to entry are not erected which unnecessarily impede new entrants. It is important that Canadians continue to have access to independent financial advisors who can provide professional financial advice, products and services on an individualized and face-to-face basis. Professional financial advisors help Canadians meet their long-term financial goals. No one spends more time with consumers, explaining financial concepts and products, and contributing positively to the financial literacy of Canadians than the financial advisor.

Since 2005 Advocis has convened membership task forces to explore this issue and has initiated discussions with other stakeholders across the financial services industry. We would be interested in discussing this issue further with the CCIR.

In closing, we would be pleased to discuss our comments with you and look forward to working with the CCIR to support its regulatory mandate to facilitate and promote an efficient and effective insurance regulatory system in Canada to serve the public interest.

Yours sincerely,



Greg Pollock  
President and CEO



Terry Zavitz CFP, CLU, RHU, GBA, EPC  
Chair, National Board of Directors