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November 11, 2008

Ms. Kim Lachapelle
Secretary General
Canadian Securities Administrators
Tour de la Bourse
800, Square Victoria, Suite 4130
Montreal, Quebec H4Z 1J2

Dear Ms. Lachapelle:

Re: Regulation of Financial Planning

We are writing to bring to the attention of the Canadian Securities Administrators (CSA) certain concerns about the policy development and rulemaking process of the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC) (collectively, the SROs), specifically with regard to proposed rulemaking in relation to financial planning.

Advocis is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our members are 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 securities.

Advocis has been a participant in the policy development process on a wide range of regulatory initiatives, including (recently) the Joint Forum of Financial Market Regulators' Framework on Point of Sale Disclosure, National Instrument 31-103, Registration Reform and related legislative proposals, as well as related rule-making proposals issued by the SROs.

We believe the CSA, with its oversight responsibilities, should be apprised of our concerns about the SROs' regulatory perspective and process, and should also be apprised of our concern that the SROs' rulemaking could have a significant negative impact on independent financial planners who are not dealer employees.

We believe that it is vitally important for consumers to have access to professional financial advice and to have access to diverse financial service options, in order to manage their financial risks and meet long-term financial goals. The independent advisory channel is populated by financial advisors – many of them members of Advocis – who hold professional designations. This channel offers millions of Canadians access to financial advice that is independent and professional.

Unfortunately rulemaking by the SROs is premised on regulation of SRO member dealers and their employees, and in our view fails to accord appropriate recognition to independent advisors as stakeholders. Recent initiatives of the SROs relating to financial planning appear to us to be designed to permit SRO member dealers to control all financial planning that is provided by their personnel, including agents who are not employees. The stakeholders consulted prior to publication of the proposals appear to be the SRO member dealers. We believe this approach is biased against the independent advisory channel, and requires correction.

Dealers appear to be the most influential stakeholder participants in the SRO rule-making process. Unfortunately, independent agents have not been accorded appropriate recognition as stakeholders, and have not been consulted at an early stage in the development of regulatory proposals that have a direct and profoundly negative impact on their business. This situation might be characterized as an example of “regulatory capture” of the SROs by their members.

This past summer, the MFDA issued a proposal to amend Rule 1.2.1 in order to remove the “widely recognized professional association” provision, on the basis that it was not being used. The FPSC expressed strong objections in a comment letter, and Advocis supported this opposition.

MFDA Rule 1.2.1 permits Approved Persons of MFDA members to provide financial planning services outside their member, provided that they are “subject to the rules and regulations of a widely recognized professional association.” The MFDA’s proposed amendment to the Rule deletes this provision.

For several years now, the MFDA has interpreted this provision out of existence by taking the position that it does not apply to Approved Persons who hold financial planning designations offered by professional designating bodies. If designating bodies such as the CLU Institute are not widely recognized professional associations whose members are subject to their rules and regulations, we are at a loss to understand what would satisfy the requirement.

Later during the summer of 2008, IIROC issued a proposed Financial Planning Rule, without consulting independent financial advisors. The proposed Rule would require member dealers to supervise all financial planning activities of agents who are not dealer employees. The commentary that accompanied the proposed rule stated that the MFDA *is* removing the “widely recognized professional association” provision even though, as far as we understood, the MFDA rule amendment process had not been completed. (Advocis submitted comments to IIROC concerning the proposed Financial Planning Rule, and we copied all CSA member jurisdictions.)

We believe the Rule tilts the playing field in favour of vertically integrated financial institutions in an employer-employee business model. It is in some dealers’ interest to have a mandate from their SRO to supervise all financial planning activities of dealer personnel who are agents and not employees. This creates a huge conflict of interest, and some dealers will supervise this activity in their own commercial interest, to the detriment of the independent financial planners and consumers.

We believe IIROC’s proposed Financial Planning Rule dramatically overreaches, and that by authorizing dealers to supervise financial planning by agents who are not employees, the Rule will enable dealers to control this activity. Some dealers will be supervising financial planning in which they have no expertise. Unless care is taken to ensure that the supervision by dealers of financial planning is strictly limited to their ensuring that appropriate standards of financial

planning practice as established by recognized professional associations are applied, some dealers are likely to exercise this supervision mandate in ways that are likely to put an end to objective independent financial planning advice to the detriment of consumers.

A financial plan can address whether and how much to contribute to an RRSP versus pay down a mortgage, whether it is prudent to buy a life insurance policy, the need to obtain a will or update a will, contributions towards an RESP or the creation of a trust, contributions to a TFSA, etc. The advice and recommendations in the financial plan may eventually lead to specific transactions through the dealer (such as the purchase or sale of a certain mutual fund or stock), however, these specific product or transaction recommendations do not form part of a financial plan. Any such recommendations are already heavily regulated through existing securities and SRO requirements, including product disclosure requirements, suitability and Know Your Client requirements.

The services that an independent financial planner provides are completely different from the services the dealer provides. Many aspects of a financial plan cannot be implemented through the dealer. Neither is the dealer likely to be qualified to supervise this activity.

We believe that some dealers are likely to exercise the power to supervise financial planning in ways that will influence or even control the financial planning process. For example, the dealer may wish the advisor to focus on retirement planning which will lead to a specific set of transactions. This supervisory mandate will create a conflict of interest situation that the dealer may resolve in its own interest, rather than permit the financial planner to provide objective financial advice. This regulatory proposal will act to reduce consumer access to professional advice as it will drive out independent planners as these regulations will become unbearable for many.

We are concerned that the Rule will serve as a model for a future MFDA rule, as we believe the MFDA is likely to take an approach that is consistent with IIROC's rulemaking.

The financial planning services that are provided by Advocis members who hold financial planning designations are not unregulated at present. Professional designation-granting associations which are widely recognized as authorities in financial planning, such as Advocis' CLU Institute, hold financial planners to standards of proficiency and rules of professional conduct, and require them to maintain proficiency through continuing education.

Our fundamental concerns are that the SROs are tied too closely to the institutional interests of their dealer members, that they tend to see regulatory issues and their solutions narrowly in terms of member regulation, and that they do not consult at an early stage with key stakeholders who are not members. In particular, we believe the SRO initiatives relating to financial planning would, if implemented, have a profoundly negative effect on independent financial advisors. We believe these proposals are deeply flawed, in large part due to the SROs' too-narrow approach, and to their failure to consult significantly affected stakeholders at an early stage.

The SROs' proposals relating to the regulation of financial planning have broad implications for the wider financial services sector. We do not believe it is helpful for the process to be initiated by SRO rulemaking that is focused on SRO member regulation. The matter of whether and how financial planning and financial planners should be regulated, should be considered in a wider context, with participation from securities and insurance regulators, industry SROs, financial planners and advisors, investors and other relevant stakeholders.

We urge the provincial and territorial securities regulators who comprise the Canadian Securities Administrators:

- To encourage the SROs, when exercising *their* member regulation mandate, to focus on the broader public interest, and to look beyond their members' interests and the narrow confines of member regulation;
- To encourage the SROs in the context of their policy development process to recognize financial advisors as key stakeholders, and to consult these stakeholders at an early stage in the regulatory process, and also consult consumers of financial planning services in instances where they are likely to be directly and profoundly affected;
- To commission an independent study of the actual risks to the investing public that are engendered by the financial planning activities that would be subject to the proposed IIROC financial planning rule, and to consider whether there are material risks that require regulation and whether dealer supervision would mitigate those risks (if any); and
- To initiate either at the CSA level or jointly in cooperation with other regulators, a broader consultation process concerning the regulation of financial planning, that goes beyond the confines of SRO member regulation initiatives and that allows for meaningful participation from all key stakeholders.

We would be pleased to meet with you to further discuss our issues and concerns around proposed financial planning regulations.

Sincerely,



Greg Pollock
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 financiers
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
David Wilson, Chair, Ontario Securities Commission
Donne Smith, Chair, New Brunswick Securities Commission
H. Leslie O'Brien, Chair, Nova Scotia Securities Commission
Winston Morris, Superintendent of Securities, Newfoundland and Labrador
Mark Gallant, Superintendent of Securities, Prince Edward Island
Susan Wolburg Jenah, President and CEO, Investment Industry Regulatory Organization of Canada (IIROC)
Larry Waite, President and CEO, Mutual Funds Dealers Association (MFDA)