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March 23, 2010

Ms. Louise Levonian  
ADM, Tax Policy  
Finance Canada  
140 O'Connor Street  
Ottawa, ON  
K1A 0G5

Dear Ms. Levonian:

### **Re. Status of Financial Services Under the Excise Tax Act**

Advocis would like to raise serious concerns arising from the apparent change in policy of the Government of Canada as to what activities of financial intermediaries do not constitute financial services under the *Excise Tax Act* and are therefore taxable for GST purposes.

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. Our almost eleven thousand members across 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.

On February 11, 2010, the Canada Revenue Agency ("CRA") released GST/HST Notice No. 250 (the "CRA Notice"). The proposed amendments in the CRA Notice, which apply retroactively after December 14, 2009, amounts to a reversal of its longstanding policies and practices as to what constitutes "financial services" under the *Excise Tax Act* and what is taxable for GST purposes. The CRA Notice amounts to an expansion of the GST tax base in relation to financial services and has potentially significant consequences for financial intermediaries and consumers. The CRA in the CRA Notice reverses a number of its own published positions with respect to what constitutes an exempt service of "arranging for" a financial service. Example 2 of the CRA Notice makes trailer commissions, and front-end load commissions subject to GST/HST. The CRA Notice did not provide a single example of a service that would still be considered to be "arranging for" a financial service under paragraph (l) of the definition of "financial service" in the *Excise Tax Act*. Therefore, it is unclear what remains as an "arranging for" exemption in light of the CRA Notice.

The CRA Notice appears to be in response to the Federal News Release and Backgrounder issued by the Department of Finance on December 14, 2009. The CRA Notice is an attempt to implement what the Department of Finance indicated would be a clarification of various issues related to the tax status of financial services.

The Department of Finance indicated that it would propose legislative amendments to “clarify”, and confirm the policy intent that certain services such as management, administration, marketing and promotional services do not constitute financial services and are therefore subject to GST/HST (the “Proposals”). The Proposals were seen as necessary to address recent court decisions including the *Canadian Medical Protective Association* case in which the taxpayer had been successful in arguing the services were exempt for GST purposes. However, the Proposals appear to go beyond providing “clarity” and confirming existing policy and rather, create much confusion, uncertainty and expand the range of financial services that will no longer be exempt from GST. This is extremely problematic as the longstanding policy of the government has been that financial services are exempt supplies under the GST.

The federal budget that was released on March 4, 2010 contains draft legislation to implement the Proposals including a broad new definition of “asset management service” and further replaces “facilitatory services” in the News Release and Backgrounder with “preparatory” services (subsection 123(1)(r.4)). Again, the draft legislation appears to be far reaching and goes beyond clarification of existing policy.

In our view, the CRA Notice coupled with these Proposals amount to a significant policy change. This will impact the amount of GST/HST paid by end consumers and could result in a shift in the burden of who is responsible for administering, collecting and remitting the GST. It is not clear at this point in time whether financial advisors will be required to register for GST purposes and remit GST. Given statements by CRA officials that front-end load commissions, deferred sales charges, commissions on various insurance products and redemption fees paid by investors do not constitute a supply of a financial service and will be subject to GST, there are significant consequences for financial advisors and to Canadian investors, who will be subject to an increased tax burden.

Such a significant change in policy should only be implemented following a broad consultative process that allows for taxpayer input. It is our understanding that the Department of Finance would not review the GST regime as it applies to financial services until after the HST harmonization with Ontario and British Columbia had occurred. These announcements are a reversal of that position. This means that the financial services industry and consumers of financial services will be dealing with implementation of the HST (and an increased tax rate) and, at the same time, a broadening of the tax base by expanding what is no longer considered to be a “financial service”, all with little or no discussion of its implications.

We are also concerned that the reversal in policy direction could potentially create an unlevel playing field between financial products sold through commissioned based financial advisors and similar financial products sold through financial institutions using non-commissioned employees. We strongly believe that any change in GST policy should not favour a particular distribution model in financial services over another.

While financial institutions will be entitled to claim offsetting tax credits, it appears that consumers will end up with an increased tax burden in respect of their purchases of financial services. Consumers are already facing existing challenges to save effectively for their retirement and other financial goals, and should not have their effective return on their investments decreased by the imposition of a GST on financial services that, up until this point in time, has not been subject to GST.

The Proposals and the CRA Notice 250 should be retracted at this stage in order to have a fulsome policy discussion. The retroactive nature of the changes makes this more urgent. Advocis urges the government to initiate a broad consultative process that involves all stakeholders. It is clear that as it stands now, there is a large degree of uncertainty as to how to apply the Proposals, who exactly will be impacted and how it will be administered.

We would be pleased to meet with you to review this matter at the earliest opportunity as the government's tax policy with respect to financial intermediaries is of great concern to our members and their clients.

Yours sincerely,



Greg Pollock  
President and CEO



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

c.c. The Honourable James Flaherty, Minister of Finance