



Advocis
390 Queens Quay West, Suite 209
Toronto, Ontario
M5V 3A2
T 416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

May 29, 2008

Mr. Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Dear Mr. Day:

Re: Ontario Securities Commission's Draft Statement of Priorities for Fiscal 2008/09

Thank you for the opportunity to comment on the Ontario Securities Commission's (OSC's) *Draft Statement of Priorities for Fiscal 2008/2009*.

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. Advocis is Canada's largest association of financial advisors, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century. Our members are individuals, the majority of whom carry on business as either sole proprietors or independent, small businesses. A smaller proportion of Advocis members operate under employee-employer arrangements of financial services firms. We represent advisors at all stages of the business cycle, ranging from new entrants to the industry through to mature practices led by leaders in the industry serving a significant client base.

A significant portion of Advocis members are regulated under provincial securities commissions. As the OSC is a key regulatory body for securities intermediaries and dealers and oversees powers delegated to recognized self-regulatory organizations, its priorities and activities directly affect a significant number of Advocis members. The following specific comments relating to these priorities are in respect of the areas that coincide with the priorities of Advocis and those that directly impact our members.

Under the environmental challenges the OSC has identified, there is recognition that there is a greater need to intensify cooperation with its regulatory counterparts in the banking, pension and insurance sectors to ensure an integrated view of market impact and investor protection. We agree that this is essential. In this respect, the OSC should pay particular attention to the approaches taken by provincial insurance regulators across the country in implementing principles-based regulation.

Recent regulatory initiatives in the Canadian life and health insurance sector illustrate how principles-based regulation, with the support and efforts of the industry, is making a significant contribution to widespread compliance of regulatory requirements. Following a comprehensive review of insurance practices over the past few years, Canada's insurance regulators under the auspices of the Canadian Council of Insurance Regulators and the Canadian Insurance Services Regulatory Organizations recommended a principles-based approach to enhance and harmonize best practices across the industry and in all jurisdictions to deal with the issue of managing conflicts of interest. The broad principles that insurance regulators have tasked the industry to implement are:

1. Priority of the client's interest
2. Meaningful disclosure of real or perceived conflicts of interest
3. Product suitability.

The industry has responded favourably to these principles and has been working diligently to implement these through a comprehensive and cooperative strategy at the company, agency and individual advisor levels. We would be pleased to outline for you in more detail the initiatives that the insurance industry has been undertaking to ensure that consumers are being adequately protected while supporting intermediaries in adhering to regulatory obligations.

As an organization representing financial advisors that in many cases hold multiple licenses to distribute securities, mutual funds, and insurance products and services, we are of the view that harmonization of regulation must not simply be achieved across Canadian jurisdictions but across financial services as well. Only then can we achieve a truly consistent, harmonized and modern regulatory system in the financial services sector. Placing greater emphasis on developing rules that cause greater burdens for compliant advisors is not in the public's best interest. A principles-based regulatory approach would give flexibility to advisors in better meeting the financial needs of their clients as financial professionals.

Principles-based regulation is also being employed in other major jurisdictions. As outlined in its April 2007 paper: *Principles-based Regulation – Focusing on the Outcomes that Matter*, the UK's Financial Services Authority notes the rationale for its proposed new principles-based approach:

Past experience suggests to us that prescriptive standards have been unable to prevent misconduct. The ever-expanding rule books of our predecessor bodies and our consolidated Handbook, designed to prevent misdemeanor, have not stopped further misselling, market misconduct or other detriment. Instead we believe that detailed rules have become an increasing burden on our own and the industry's resources.

With respect to the adequacy of enforcement actions, we believe that greater emphasis should be placed on investigation and enforcement of regulatory policies and rules, and punishing "bad behaviour" of a few individuals rather than creating overly burdensome regulations on those who are already compliant. Advocis believes that those who perpetrate such crimes against consumers should be appropriately punished.

We agree entirely that investors, the clients of Advocis members, continue to be increasingly reliant on the capital markets for their retirement savings. Given that investment products are evolving rapidly and becoming more complex in some areas, the OSC should recognize that consumers are turning to professionals increasingly for assistance when making financial decisions given the increased complexity of a more diverse marketplace. Maintaining a healthy distribution channel servicing consumers should be a key priority to ensure the public has access to competent financial advisors and quality financial advice. In balancing regulation with efficiency of the

markets and market participants, we strongly believe that this needs to be a decision factor for the OSC in its implementation of regulatory policy. As outlined in the Statement of Priorities, addressing market failures and other potentially adverse impacts need to be addressed without unduly impairing market efficiency through excessive regulation or costs of compliance. We believe this should be an approach taken in addressing all issues of this nature, including where the responsibility has been downloaded to the two recognized self regulatory organizations (SROs), namely the Investment Dealers Association (IDA) and the Mutual Fund Dealers Association (MFDA).

Advocis believes that one of the most effective ways to protect consumers is to ensure that they receive professional financial services advice. Advocis takes the view that professional financial advice is delivered by an accredited financial advisor who has a professional designation, adheres to a professional code of conduct, maintains membership in a recognized professional body, subscribes to practice standards, acquires competency-based continuing education credits and maintains adequate errors and omissions (E&O) insurance coverage to protect both the consumer and the financial advisor.

Goal 1 Identify the important issues and deal with them in a timely way

We are encouraged that the OSC will consult and collaborate with industry participants to identify and address important issues, and work to harmonize, streamline and modernize securities laws and regulations. It is our hope that the OSC, and through its various affiliations such as the Canadian Securities Administrators (CSA), recognize the value of stakeholder input at every stage of the policy development process.

Advocis believes that effective public policy requires clearly identifying issues or problems and then using appropriate methods to address or resolve them. To help identify important issues, we encourage the OSC to consult with relevant stakeholders who understand the business and who may bring a unique perspective to an issue. We believe that such stakeholders are an excellent resource that the OSC should consult more frequently, particularly during the early stages of policy development. Not only will such industry consultation lead to more effective and efficient policies and practices but it will garner more support among market participants.

Advocis wishes to contribute to the consultative process to ensure that its views and concerns are appropriately addressed. We believe this will be beneficial to the OSC, as it will have the opportunity to consider input from the largest, broad-based group representing Canada's financial advisor community. The professional financial advisor provides guidance and advice to consumers as they interact with financial institutions, access financial instruments and plan for their futures. Having the views of financial advisors reflected in the OSC's deliberations is crucial, as financial advisors are frequently the direct link to consumers. Moreover, Advocis brings a unique and valuable perspective to the policy discussion at a time when regulators are looking for ways to harmonize, modernize, and streamline regulation. As a majority of our members are self-employed independent financial advisors, dual-licensed for life and health insurance and mutual funds, are not direct participants of the capital markets, and are regulated by provincial insurance regulators, the issue of convergence in the financial services industry is important to them. As many of our members are subject to two provincial regulatory regimes (insurance and securities) we would like to see cross-pillar regulatory harmonization that is principles-based and not administratively costly or burdensome for our members.

Unfortunately, and to the detriment of the industry and investors, there have been situations in the past where the early conceptualization of regulatory policies appears to have taken place in a closed environment made up almost exclusively of regulators, without the benefit of broad industry input at the onset of the process.

A case in point is the implementation of the Client Relationship Model, which was developed by the OSC through the CSA, the IDA and MFDA. According to the IDA's proposed rule change document to implement the core elements of the Client Relationship Model, the first and only time financial advisors were given an opportunity to comment on the proposed conduct rules came in August 2007, three years after the SROs began working on the current version of the Client Relationship Model under the auspices of the CSA Registration Reform Project. We do not believe that this forms a constructive consultative process, since it is in the early stages of conceptualizing new policy directions where stakeholder input is the most valuable. Furthermore, early interaction with stakeholders most affected by regulatory proposals can save considerable time and effort within an iterative process, since there would be greater buy-in to the overall approach at the early stages of policy development. Furthermore, the fact that consumers, the intended beneficiaries of the new rules from an investor protection standpoint, have not been formally engaged in the process to establish new disclosure requirements is problematic. While there was intent to conduct a cost-benefit analysis of the proposals with investors, it did not proceed because of failure to reach an agreement on the intended cost-benefit survey work between regulators, the SROs and industry groups. Advocis was not part of these discussions.

The recently announced *Joint Standing Committee on Retail Investor Issues* is another example where we believe the direct input from advisors and retail investors as active participants of the committee would be of great value to the OSC. According to the Terms of Reference document released on April 24, 2008, the purpose of the Committee is to provide an effective forum in which retail investor issues can be discussed and considered among the four organizations at the executive level. While it is important to have the involvement of senior ranking officials of the OSC, the two SROs and the Ombudsman for Banking Services and Investment, the views of retail investors and their advisors will be heard as stakeholders providing external input, as opposed to being active, internal participants in the identification of issues and of the policy development process. We believe that this is a serious flaw and would encourage the OSC to reconsider its approach and allow credible representatives from the advisory community and the investing public to actively participate on the Standing Committee.

Financial advisors are the intermediaries that deal directly with consumers, so we strongly believe that any initiative that will change the way we are permitted to interact with our clients should have our input directly. We wish to be actively involved in developing, reviewing and commenting on proposals regarding major policy or rule changes, which have a direct impact on our members and the entire advisor community. Getting the approach right in the early stages of policy development is crucial if regulators' objectives are to ensure that the industry embraces specific regulatory proposals being contemplated, and the outcome of consumer protection is to be achieved in a balanced manner.

With respect to the OSC's priority of strengthening the registration regime, Advocis has a keen interest in the CSA's Registration Reform Project intended to harmonize, streamline and modernize the registration regime across Canada, which is being implemented through *Proposed National Instrument 31-103 Registration Requirements*. The Statement of Priorities states that the OSC will support the Ministry of Finance in finalizing legislative amendments that would, if approved, support the new registration regime. This is essential to ensure that the final policy proposal is consistent with the legislation. However, we fail to understand why the draft legislative amendments have already been contemplated while NI 31-103 is still in proposal draft, and stakeholder comments are still being sought. Our view is that all stakeholder input should be taken into consideration in respect of the proposed policy instrument prior to draft legislation being presented to the public for comment. This will allow the OSC and its counterparts in the CSA to ensure that it has dealt with any issues or concerns from stakeholders well before the Ministry undertakes its approval process for the legislative changes.

We agree with the new priority of the OSC to focus compliance efforts on new and high risk market participants. Enhancing compliance reviews of market participants to identify and prevent violations of Ontario securities laws should be approached through a risk-based approach. We would encourage the OSC to significantly enhance its risk-based approach to compliance oversight to ensure it is targeting riskier situations to be more effective and efficient with its resources.

Goal 2 Deliver fair, vigorous and timely enforcement and compliance programs

Advocis supports enforcement of regulatory policies and rules that provide protection to investors and foster confidence in the integrity of the capital markets in Ontario. Devoting more resources to enforcement related to market conduct and pursuing harmonization of enforcement practices across Canadian jurisdictions wherever possible will assist the OSC in achieving its goal.

Harmonization of enforcement practices includes strengthening the OSC's relationship with the recognized SROs for the purpose of ensuring that securities laws and principles are accurately reflected in SRO policies and rules, and appropriately and consistently applied. We note that the interests of dealers and advisors are often very different, and SROs do not always reflect the interests of advisors as their direct members are the dealer firms.

Goal 3 Champion investor protection, especially for retail investors

Advocis is committed to enhancing consumer protection. We are encouraged by the OSC's goal to champion investor protection, particularly through investor education and initiatives that improve the advisor/retail investor relationship.

Advocis has been actively participating with the Joint Forum to harmonize point of sale disclosure for mutual funds and Individual Variable Insurance Contracts (IVICs). This is an extremely important initiative and will have significant impacts on both market participants and consumers. While Advocis strongly supports consumer protection, including the Joint Forum's vision for simple, meaningful and timely disclosure to clients, significant industry concerns have been raised with respect to the proposed framework's implementation, particularly with respect to delivery. Advocis is concerned that the framework could create unintended consequences, particularly for consumers whose purchase decisions may be disrupted depending on the delivery channel(s) available to them.

We believe that the Joint Forum could effectively achieve its objectives by addressing industry issues and concerns, particularly with respect to the time and method of delivery. If these issues cannot be effectively resolved, consumers may ultimately be frustrated by the disruptions to their purchasing decisions caused by imposed inefficiencies in various delivery channels, and potentially be pushed to consider alternative "non-fund" investment products.

We are pleased to see that the Joint Forum is taking the appropriate time to assess the various stakeholder comments. Given these and other industry concerns, we believe that the framework needs to be appropriately modified, which should be reflected in the next iteration of the proposal.

Goal 4 Support and promote a more flexible, efficient and accountable organization

Advocis supports the OSC's goal to make better use of its resources and believes that this could be achieved by reviewing its approach to public policy and its policy development process, including deciding what and how it will regulate.

While Advocis is a strong supporter of consumer protection, we believe that regulation is not always the most effective and efficient way to achieve this objective. We believe that when addressing emerging market developments, private-sector solutions should be considered before

regulation. Not every investor violation, whether it is real or perceived, can or should be remedied with a regulatory rule or policy response.

Effective public policy requires identifying the problem or issue correctly and then using appropriate methods to address or resolve it. In some cases, there may not be a problem or issue that needs to be addressed. Moreover, regulators who initiate policy without input from market participants during the early development stages risk incorrectly defining problems and hence implementing ineffective policies. While we recognize the benefits of a proactive regulatory approach to prevent, detect, and deter harm to investors and the overall market, we believe each regulatory initiative needs to be weighed against the risks of over-regulation and the imposition of unnecessary administrative burdens and compliance costs on market participants and ultimately investors. The overall cost of regulation is an important issue of increasing concern for our members.

We therefore encourage the OSC to consider the current cost/benefit analysis process to ensure that a robust review of the impact of proposed regulation on all stakeholders is completed before regulatory changes come into effect. The analysis should also consider alternative approaches, such as a principles-based approach to regulation. Moreover, we believe that the cost/benefit analysis should be shared with market participants to help them understand the rationale for any increased regulation.

Prescriptive rules that do not directly ensure enhanced consumer protection impose additional regulatory burdens and costs on our small business members. These added costs make it more difficult for our members to compete against larger financial institutions, potentially resulting in fewer independent advisors in Ontario and ultimately less choice for consumers.

Finally, as a matter of presentation, we believe that it would be useful for stakeholders to receive an update in the published Statement of Priorities on the progress the OSC has made on its key priorities and goals from the previous year. While we recognize that this information is provided in other publications such as the OSC's Annual Report, it would be useful to have it outlined in the Statement of Priorities to determine what has been accomplished and where there are any significant shifts in priorities. This is a practice the Financial Services Commission of Ontario employs, and thus we would encourage the OSC to adopt this approach for future releases of its Statement of Priorities.

We look forward to working with the OSC to assist in achieving its objectives for the coming fiscal year and into the foreseeable future.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'T. Black Hughes', with a long, sweeping flourish extending to the right.

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