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April 24, 2009

Douglas Arnott  
Clerk, Standing Committee on Government Agencies  
99 Wellesley Street West Room 1405,  
Whitney Block Queen's Park  
Toronto, ON M7A 1A2

Dear Mr. Arnott,

**Re: ADVOCIS RESPONSE TO THE OSC STATEMENT TO THE STANDING COMMITTEE ON GOVERNMENT AGENCIES**

Advocis, The Financial Advisors Association of Canada, is disappointed by the response of the Ontario Securities Commission (OSC) to the submission that Advocis made to the Standing Committee on Government Agencies (the Standing Committee) in respect of the Standing Committee's review of the OSC.

Advocis made the following key points to the Standing Committee:

- Regulation is skewed in favour of the interests and business model of market-dominant investment dealers that are associated with vertically integrated financial institutions and have an employer-employee business model. This regulatory slant influences the regulatory activities of the self-regulatory organizations (SROs), namely the Mutual Fund Dealers Association (MFDA) and the Investment Industry Regulatory Association of Canada (IIROC) that are formally recognized and supervised by the OSC. These SROs regard dealers as their prime constituency, and consultation with advisors tends to be an afterthought.
- Financial services regulators and SROs should listen to a wider range of stakeholders, including financial advisors and consumers. The predominant influence of investment product manufacturers and distributors needs to be balanced by other stakeholders, such as advisors who work to enhance the long-term financial security of their clients.
- The OSC should consider appointing a financial advisor to fill one of the current Commissioner vacancies.
- Financial advisors establish long-term relationships that empower investors. Financial advisors should be consulted by the OSC and the SROs at an early stage in the policy development process.
- The regulators claim that they identify problems and assess the impact of proposed regulation on stakeholders. What routinely happens, however, is that the securities regulators, and especially the SROs, decide how they propose to regulate without due consultation with all affected stakeholders, and then produce boilerplate justifications to support their decisions for more regulation.
- The OSC and the SROs should emphasize a principles-based approach to regulation (principles-based regulation, or PBR), instead of prescriptive, rules-based regulation.

- The imposition of regulation should be supported by a clear rationale and evidence of need and by robust cost-benefit analysis, and follow appropriate consultation.

The OSC's response to the concerns conveyed to the Standing Committee by Advocis is to assert that the OSC's approach to regulation is entirely fair, balanced and appropriate.

The OSC claims:

- its requirements and processes ensure that all relevant stakeholders are always consulted;
- problems that are proposed to be addressed by regulation are always clearly identified, and the costs and benefits of proposed regulation are always given appropriate consideration;
- it takes a practical approach to assessing regulatory compliance and recognizes that compliance standards may vary based on the size and structure of a firm; and
- the regulator always maintains an appropriate balance between rules and principles in its approach to regulation.

The OSC does not acknowledge that there is an imbalance in regulation that favours the interests and business model of market-dominant dealers and places costly burdens on compliant small players.

We believe that a more balanced approach to regulation that accommodates a wider range of market participants and business models would benefit investors by ensuring continued diversity, choice and competition in the marketplace.

The OSC dismisses Advocis' suggestion that they should consider appointing a financial advisor to fill one of three Commissioner vacancies. The OSC had advertised for candidates with a view to filling the vacancies with someone with experience in a senior capacity with a large corporate issuer of securities, someone with senior experience with an investment dealer and a lawyer with litigation or adjudication experience in corporate, securities or administrative law. We believe that appointing a financial advisor would bring a broader more balanced perspective to the OSC, as it is advisors that deal directly with the consumers the OSC is mandated to protect.

In response to Advocis' call for a principles-based approach to regulation, the OSC asserts that they "balance rules and principles", and that the SROs when they issue rules articulate the principles that they rely on.

We do not agree that the insertion of references to principles in SRO rules is making their approach less prescriptive. IIROC's proposed IIROC Financial Planning Rule, for example, proposes to require investment dealers to supervise all non-transactional financial planning provided by dealer personnel outside the business of the dealer with a set of new rules instead of relying on principles. Similarly, the MFDA's proposed rule changes to implement the Client Relationship Model, prescribe detailed requirements for all client communications and other areas of the conduct rules under National Instrument 31-103.

The OSC also asserted in response to the call for a principles-based approach to regulation that "the UK regulator is signaling that it is moving away from a principles-based approach to a more outcomes-based approach."

We believe the OSC's statement mischaracterizes the position of the FSA as moving away from principles-based regulation. It is our understanding that both principles and outcomes are integral to a principles-based regulatory approach. It is clear from recent pronouncements from the UK that their financial services regulator remains committed to a regulatory philosophy of principles-and-outcomes-based regulation.

In February 2009, FSA Chief Executive Hector Sants described the FSA's regulatory approach both as principles-based and outcomes-based. On page 11 of The FSA Business Plan 2009-2010, which was published in February 2009, he states that "*Principles-based regulation means, wherever possible, moving away from prescriptive rules to a higher-level articulation of what we expect firms to do.*"

We note in this regard that the approach to the regulation of Canadian chartered banks that has been taken by the Office of the Superintendent of Financial Institutions (OSFI), has been essentially principles-based, as compared with more rules-based bank regulation in the United States. OSFI's flexible principles-based approach to prudential regulation of the banking industry in Canada has proved far more effective in addressing the unpredictable risks of complex derivatives, than has the less flexible rules-based approach favoured by US financial regulators.

In his Statement to the Standing Committee, OSC Chair David Wilson stated that "When making rules we need to determine the right balance between predictability and certainty (which implies rules) and flexibility (which implies principles). Both principles and rules work together in our regulatory system."

This statement, we submit, reflects a misunderstanding of PBR. It is in our view erroneous to characterize the difference between PBR and rules as a difference between predictable and certain rules and less clear but flexible principles. PBR does not substitute vague principles for clear rules. PBR articulates clear principles and identifies desired regulatory goals and outcomes, and uses rules where appropriate to achieve desired outcomes.

We believe that the prevailing rules-based approach leads to overly-prescriptive rules and costly compliance regimes that offer little or no benefit or enhancement of consumer protection. Statements in SRO rules and bylaws that refer to broad principles and purposes do not necessarily mean that their approach is principles or outcomes-based, and in our view often serve as a means to introduce highly prescriptive SRO requirements.

In conclusion, we continue to strongly believe that Government should offer ongoing direction to regulators to ensure that Ontarians have access to professional financial advice and choice in financial services. Accordingly we urge the Committee to offer direction to the Ontario Securities Commission, and through the OSC to the MFDA and IIROC, with the primary goals of:

- preserving consumer choice and access to professional financial advisors and to a range of choices in the financial services marketplace;
- ensuring that financial regulation is even-handed and does not favour large players and their economic model over small business financial advisors;
- ensuring that independent financial advisors are consulted as key stakeholders in respect of proposed regulatory initiatives that affect them;

- ensuring that new rules and compliance burdens are only imposed when necessary to address problems, and only after less costly principles-based approaches have been considered; and
- encouraging regulators to obtain objective cost-benefit analysis of regulatory proposals and to consider less prescriptive principles-based approaches to regulation.

Sincerely,

A handwritten signature in black ink, appearing to be 'GP', followed by a long horizontal line that ends in a small arrowhead pointing to the right.

Greg Pollock  
President and CEO

A handwritten signature in black ink, appearing to be 'Kristan', written in a cursive style.

Kristan K. Birchard, CFP, CLU CH.F.C., TEP  
Chair, National Board of Directors

Cc: The Hon. Dwight Duncan, Minister of Finance for Ontario

Cc: David Wilson, Chair, Ontario Securities Commission