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William (Bill) S. Rice, Q.C.
Chair
Alberta Securities Commission
Ste. 400 – 300, 5th Avenue SW
Calgary, Alberta T2P 3C4

Dear Mr. Rice,

Re. Incorporation of Licensed Salespersons

We are writing to request that the Alberta Securities Commission re-consider its current position that restricts mutual fund licensees (advisors) from incorporating.

Advocis, the Financial Advisors Association of Canada, 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 oldest and largest voluntary professional membership association of financial advisors representing life and health insurance licensees, and mutual fund and securities registrants across the country.

As you are aware, mutual fund advisors in the provinces of British Columbia, Saskatchewan, Ontario and Nova Scotia are permitted to receive the payment of commissions into an incorporated entity, while in Alberta this is not formally permitted. Most recently, the province of New Brunswick is considering allowing incorporation of individual mutual fund licensees as part of its recognition order of the Mutual Fund Dealers Association (MFDA).

This inter-jurisdictional inconsistency creates an uneven playing field across Canada and is a clear disadvantage to Alberta advisors. It also creates a noted disparity between how commissions from the sale of insurance products and commissions from the sale of mutual fund products may be received, as insurance regulators permit insurance commissions to be paid into a corporation. In the province of Alberta, insurance licensees are permitted to

incorporate and receive commissions through corporations, while those same individuals who are also registered to distribute mutual funds are not permitted to earn commissions through a corporation. This creates a significant administrative burden on advisors holding both mutual fund and insurance licenses.

Incorporation is a modern and efficient business structure that offers many practical advantages. A significant number of mutual fund advisors across Canada use corporate structures for business purposes such as tax planning, as well as providing more efficient succession planning and business expansion by easing administrative costs.

We recognize that Canadian securities legislation generally does not permit incorporated entities, or ‘sales companies’ to register for the purposes of making trades in securities. Many provincial securities acts define a “salesperson” as an individual who is employed by a dealer for the purpose of making trades in securities. The word “individual” does not include an incorporated entity and sales companies do not fall within the definition of “salesperson”.

However, within the four provinces referenced above, the MFDA is formally recognized by the respective securities commissions, as it is in the Province of Alberta. Incorporation of mutual fund licensees has been permitted in these provinces since 2001 through suspension of MFDA Rule 2.4.1 (*Remuneration, Commissions and Fees – Payable by Member Only*), which is now scheduled to expire on December 31, 2008 after it was recently extended for another two years.

As an initial step, we urge the Alberta Securities Commission to follow the example of the four provinces that do permit payment of commissions into a corporation by suspending MFDA Rule 2.4.1. In these provinces MFDA members (dealer firms) and Approved Persons (mutual fund sales representatives) must adhere to MFDA Bulletin *MR-0002 Payment of Commissions to Non-Registered Entities*, which states that commissions can be paid to a corporation if (Section 2):

- (a) the Member and its Approved Persons agree, and cause any recipient of commissions on behalf of Approved Persons that is itself not registered as a dealer or salesperson to agree to provide the Member, the applicable securities commission and the MFDA with access to its books and records for the purpose of determining compliance with the rules of the MFDA and applicable securities legislation. A sample form of agreement is attached as Schedule “A” hereto (*refer to MFDA MR-002*); and
- (b) the Member complies with all of the other MFDA Rules in effect. The transition period for Rule 2.4.1 does not diminish the Members’ and Approved Persons’ obligations and responsibilities to comply with all of the other MFDA Rules.

In particular, Members will have to structure their relationships with Approved Persons to comply with Rule 1. For instance, where a Member conducts business through Approved Persons acting as agents, the Member must still comply with Rule 1.1.5, which requires the Member to have a written agency agreement with its Approved Persons confirming the Member's responsibility to supervise the Approved Person and confirming

the Member's liability for the actions of the Approved Person relating to the Member's business. Therefore, regardless of the remuneration arrangement between a Member and an Approved Person, the Member is responsible and liable for the actions of its Approved Person in accordance with the MFDA Rules.

We believe that this forms the basis of a permanent approach to allowing for incorporation of mutual fund representatives, while ensuring investors are adequately protected. At present, a considerable number of mutual fund advisors in Canada use corporate structures to simplify administrative costs, tax and estate plan and facilitate business expansion, which do not impede regulatory scrutiny of their business or shield them from any obligations or liability to clients. These business practices have been undertaken in the absence of legislative requirements. Under current suspension of MFDA Rule 2.4.1, we are not aware of any major issues or concerns related to instances of an Approved Person escaping direct liability to his or her clients while operating under a personal corporation business structure.

Now that the issue of incorporated representatives resides with the Canadian Securities Administrators (CSA) as part of its overall Registration Reform Project, and the CSA continues to examine potential options to permit all securities representatives to carry on securities related activities through incorporated entities, Advocis believes that any new rules or requirements should not constrict current practices in Canada with respect to the type of corporate structures currently in existence. Mutual fund advisors have been using general purpose personal corporations to operate their businesses for a number of years. As the Alberta Securities Commission and, more generally, the CSA contemplate this issue further, it is important to allow for significant flexibility with respect to the type of corporate structures permitted.

We would be pleased to meet with you to explore this issue further and to address any questions you may have. Furthermore, we would like to take the opportunity to share with you our initial views regarding the CSA's *Proposed National Instrument 31-103 Registration Requirements* and the implementation of the *Client Relationship Model*. In the mean time, should you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to be a stylized name, possibly 'A. D.', written in a cursive style.