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May 29, 2008

Bob Christie
Chief Executive Officer & Superintendent, Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, Ontario
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Dear Mr. Christie:

Re: FSCO Statement of Priorities - June 2008

Advocis appreciates the opportunity to provide comments to the Financial Services Commission of Ontario (FSCO) regarding its Draft Statement of Priorities – June 2008.

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.

As FSCO is the regulatory body for insurance intermediaries in Ontario, its strategic priorities and activities directly impact the members of Advocis. As a key stakeholder in the policy development process as it relates to the licensing, market conduct and consumer protection in the distribution of life and health insurance, we are pleased that FSCO's core values includes the concept of *fairness in dealing with stakeholders in an even-handed manner*. We commend both FSCO and the Canadian Council of Insurance Regulators (CCIR) for continuing their tradition of consulting with stakeholders at the early stages of policy development. We believe that this is extremely important, since it is in the early stages of developing new policy directions where stakeholder input is the most valuable. It is our hope that other Canadian regulators follow the example set by insurance regulators as a model for undertaking meaningful public consultations with consumers, financial advisors and other market participants.

Key Challenges

The Statement identifies a number of key challenges that FSCO must take into account in developing its strategic priorities. We agree that it is important to recognize that financial services market participants in the global marketplace are no longer tied to one or two business lines and can offer a broad range of financial services, many of which are subject to different regulatory regimes. This poses a challenge not only for market participants and intermediaries but for consumers as well, who are often confused as to the multitude of different regulatory requirements that form part of the distribution function within the financial services marketplace.

We applaud FSCO for recognizing the importance of the fact 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 continue to be a key priority to ensure the public has access to competent financial advisors and quality financial advice.

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. Insurance regulators are making significant strides in this regard. Recent regulatory initiatives in the Canadian life and health insurance sector around managing conflicts of interest illustrate how principles-based regulation, with the support and efforts of the industry, is making a significant contribution to widespread compliance of regulatory requirements with the least amount of regulatory burden for advisors and greater benefits from a consumer protection standpoint.

The 2008 Draft Statement of Priorities identifies regulatory renewal as an additional factor that can impact on FSCO's responsibilities as a regulator. In particular, FSCO proposes to adopt refined methods for the regulation of insurance based on the risk-based approach to regulation. In taking a risk-based approach, regulation can and should be complemented with a principles-based approach to implementing regulation as has recently been the case in the development of the principles around managing conflicts of interest for insurance intermediaries. Once it was determined by the Industry Practices Review Committee (IPRC), which is chaired by FSCO, that no illegal practices were occurring in Canada, the IPRC determined that the best course of action was to examine the implementation of principles by the industry, especially given that no significant problems existed. The industry has responded favourably to the principles regarding managing conflicts of interest and has been working diligently to implement these through a comprehensive and cooperative strategy at the company, agency and individual advisor levels. This demonstrates an appropriate regulatory response to the circumstances that is risk-based at its rudimentary level, given a wide range of factors including the potential risk to consumer confidence and the potential for increased regulatory burden on intermediaries.

Strategic Priorities

In order to respond to these challenges, FSCO has identified the following key strategic priorities:

- I. Promote a coordinated national approach to regulatory issues.
- II. Enhance the risk-based approach to regulation.

- III. Review and recommend amendments to the regulatory framework to keep pace with changes in the marketplace.
- IV. Improve delivery of services.

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.

Promote a coordinated national approach to regulatory issues:

We support FSCO in its effort to develop harmonized regulatory solutions through its participation in national bodies such as the Joint Forum of Financial Market Regulators (Joint Forum) and the CCIR. Efforts in these organizations will lead to a greater degree of consistency in the manner in which financial services intermediaries are regulated across Canada.

That being said, once an agreed upon common approach is developed with input from industry and other key stakeholders, it is important that individual regulators within these umbrella organizations follow the recommendations, where appropriate and applicable in their respective jurisdictions, if national harmonization is to be achieved. If this does not occur, it defeats the main objectives of these initiatives and dilutes the effectiveness of coordinating regulatory bodies. More importantly, it creates an uneven playing field where intermediaries in some jurisdictions are regulated differently than intermediaries in other jurisdictions.

Advocis has been actively participating with FSCO in its efforts through the Joint Forum to harmonize point of sale disclosure for Individual Variable Insurance Contracts (IVICs) and mutual funds. This is an extremely important initiative and will have significant impacts on both market participants and consumers. We are pleased to see that the Joint Forum is taking time to evaluate stakeholder comments made to its proposed point of sale disclosure framework. 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.

Advocis is participating on the Joint Forum's Industry Task Force to Review the Guidelines for Capital Accumulation Plans (CAPs) released by the Joint Forum in 2004. It is extremely important to measure the success of their implementation and determine if any additional work is required in this area. Advocis was a key stakeholder when the Guidelines were first developed and introduced, and agrees with FSCO through its leadership role in the Joint Forum that a review at this early stage will assist in determining the effectiveness of these principles-based guidelines.

Advocis was engaged in and generally supportive of FSCO's initiative through the CCIR to put forward a model for privilege for documents created as part of insurer risk self-assessments. Advocis had recommended that privilege be extended beyond the level of insurance company to apply to intermediaries as well. While the CCIR will publish its revised privilege model shortly, it is our understanding that intermediaries and agencies will not be covered under the privilege model. Therefore, we believe that FSCO and the CCIR should, at a minimum, continue to examine the scope for expanding the application of privilege in self-evaluative assessments as a priority, since this will assist in promoting widespread compliance of regulatory requirements and principles throughout the entire distribution channel in the life and health insurance industry.

Advocis will continue to work with FSCO and the CCIR in the development and implementation of solutions to address sales and claims issues related to the incidental selling of insurance as a key priority. Advocis has a keen interest on the issue of incidental selling of insurance, particularly where it relates to the promotion of greater consumer protection and a level playing field for all in the insurance industry. At its 2007 AGM, Advocis members overwhelmingly supported a resolution to promote mandatory licensing for individuals who sell insurance regardless of their distribution channel in order to advance these key principles in the regulatory framework. We look forward to working with provincial insurance regulators to ensure consumers are adequately protected. Advocis will continue to strongly promote consumer protection through mandatory provincial licensing of all who distribute life and health insurance products irrespective of where consumers purchase them. This consultation is particularly timely in light of the May 31, 2007 Supreme Court of Canada ruling in the case of *Canadian Western Bank et al. v. Alberta*, giving the provinces jurisdiction over federally-regulated financial institutions in the areas of consumer protection and market conduct in the sale and distribution of creditor insurance.

Moreover, we applaud the CCIR's willingness to explore progressive regulatory approaches and for seeking industry input in order to assess their potential impacts on various market participants and their potential effectiveness in achieving desired regulatory outcomes. We understand the CCIR's desire (as a multi-sector regulator) to adopt uniform regulatory approaches to address common issues facing both large and small financial services providers, in a manner that best utilizes resources. Moreover, we appreciate the CCIR's desire to raise the standards for consumer protection while reducing the cost of compliance for industry.

Based on our analysis of the CCIR's proposed *risk-based approach to market conduct regulation*, we believe that this approach is not particularly well suited for market conduct regulation of insurance intermediaries, specifically financial advisors, and has the potential of creating more regulation, not less. Moreover, the challenges identified by the CCIR may be insurmountable. In our view, the conditions that make a risk-based approach suitable for prudential regulation, such as a clear definition and identification of risks, comprehensive assessments, and extensive ongoing dialogue between the regulator and a relatively few number of large institutions, simply do not exist or are impractical for market conduct regulation of thousands of financial advisors. In addition, pro-active, preventative regulation creates the potential of regulating perceived risks that have not demonstrated themselves to be a problem. Moreover, we believe that adopting a risk-based approach and trying to make it "fit" for market conduct regulation may lead to the development of complex risk management systems and unnecessary compliance requirements. Ultimately, such an approach could create market distortions, an un-level playing field, and frustrations among market participants, without achieving the CCIR's stated potential benefits or public policy goals.

Advocis remains a strong advocate of principles-based regulation, and it is our hope that the CCIR will continue to work cooperatively with industry in promoting the adoption of best practices, professionalism of financial advisors, and a principles-based approach for market conduct regulation. We are confident that over time, many regulators will recognize the merits of a principles-based regulatory regime, such as that recently adopted by the Financial Services Authority (FSA) in the UK, as an effective and efficient means of regulating certain market participants while enhancing consumer protection.

In our view, regulation of insurance intermediaries should be developed using a bottom-up approach specifically designed to address their particular business environment and circumstances, rather than importing an approach used by other financial regulators to regulate a significantly different business. An important element of a bottom-up approach involves the direct input from consumers and financial advisors as to what the key risks are that need to be regulated.

Review and recommend amendments to the regulatory framework to keep pace with changes in the marketplace:

A key priority of FSCO is to provide assistance and support to the Ontario Expert Commission on Pensions in its examination of legislation governing the funding of defined pension plans, the rules related to pension deficits and surpluses and other issues related to the security, viability and sustainability of the pension system in Ontario. Advocis is becoming increasingly involved on pension issues and would like to consult more directly with FSCO in this regards. We are well positioned to provide a unique perspective and a meaningful contribution to the pension system review. We share the common objective of helping to ensure that the pension system in Canada, both provincially and federally, remains viable and sustainable. We add one further objective; that is to encourage and maintain higher levels of plan sponsorship. Advocis serves small and medium-sized business owners and operators through the provision of professional financial advice and insurance and financial services products.

Retirement planning has become a priority to millions of Canadians. We work with individuals, families and businesses in achieving their financial objectives. In fact, in response to the growing concern among Canadian workers and employers with respect to the retirement system, Advocis recently established the Pension Task Force whose mandate is to provide public policy advice to interested stakeholders, in particular governments and pension regulators. More specifically, the Task Force wants to promote a healthier pension system in Canada and develop solutions to help ensure that pension plans remain sustainable from both an employer and consumer perspective, including encouraging higher levels of plan sponsorship.

As the regulator for provincial pension plans, FSCO has been active in the development of pension statutes that would serve as a model for federal and provincial governments to consider when they are making amendments to their pension legislation. Advocis believes that harmonization in this area is of vital importance, and will be taking a more active role in the future as a key stakeholder to assist FSCO in achieving this objective. Advocis also intends to provide its expertise in assisting FSCO and the Ontario Government with the examination of legislation that governs the funding of pension plans, the rules relating to pension deficits and surpluses and other issues relating to the security, viability and sustainability of the pension system in Ontario.

In closing, I would be pleased to discuss our comments with you and look forward to working with FSCO to support its mandate of protecting the public interest and enhancing public confidence in the regulated financial services sectors. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Hughes', with a long, sweeping horizontal line extending to the right.

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