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September 29, 2008

Sarah Corrigall-Brown
British Columbia Securities Commission
701 West Georgia Street
Vancouver, BC
V7Y 1L2

Email: scorrigall-brown@bcsc.bc.ca

Dear Ms. Corrigal-Brown:

Re: Joint Notice and Request for Comment of Certain Recognizing Regulators of the Mutual Fund Dealers Association of Canada - Application to Amend Recognition Order: Suspension of MFDA Rule 2.4.1

Advocis appreciates the opportunity to comment on the proposed extension to the suspension of MFDA Rule 2.4.1 *Remuneration, Commissions and Fees – Payable by Member Only* (the, Rule) in order to permit commissions and other fees to be paid to non-registered entities.

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.

Incorporation is a modern and efficient business structure that offers many practical advantages. A significant number of financial advisors across Canada use corporate structures for business purposes such as expansion of their business and easing of administrative costs. It also allows for efficient succession and tax planning.

Advocis supports the MFDA proposal for the continuation of the suspension of the Rule. However, we share the view of many provincial securities regulators that a permanent solution is needed. If the Recognizing Jurisdictions of the MFDA that have temporarily suspended Rule 2.4.1 (British Columbia, Saskatchewan, Ontario and Nova Scotia) extend the current suspension of the Rule to 2010, the suspension of the Rule will have been extended for a third period. It is reasonable to question the need for a Rule that keeps being suspended.

In our view a permanent solution will likely go beyond the scope of the MFDA mandate. A harmonized approach will require legislative amendments to provincial securities acts to permit all advisors to carry on securities-related activities through incorporated entities.

A permanent solution will accommodate the use of corporate structures by all registrants and licensees. Currently, a significant number of mutual fund advisors in Canada use general purpose personal corporations to operate their business. We are not aware of situations where advisors operating through corporate structures have impeded regulatory scrutiny of their business or shielded themselves from obligations or liability to clients. Indeed, the compliance examinations conducted by the MFDA, and shared with us indirectly through their submission to the Recognizing Jurisdictions, support the claim that no investor harm is resulting from the suspension of Rule 2.4.1.

Generally, provincial securities legislation 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 'salespersons'. Further, most provincial securities legislation does not permit incorporated entities, or 'sales companies' to register for the purpose of making trades in securities. The exception to these general rules can be found in the Prince Edward Island Securities Act. Under the Prince Edward Island Securities Act, the definition of 'adviser' and 'person' explicitly accept that a corporation can be an adviser, registrant and market participant. We view this as a progressive step that other Canadian jurisdictions should look to as an example for future legislative amendments.

The securities commissions of British Columbia, Saskatchewan, Ontario, and Nova Scotia allow for the incorporation of mutual fund licensees and for the payment of commissions and fees to a corporation on a temporary basis. This is achieved through the suspension of the Rule. Most recently Manitoba and New Brunswick issued Blanket Orders allowing for the same and have indicated that it is not prejudicial to the public interest to permit this structure, nor to exempt a corporation controlled by an individual registrant from the registration requirements of the securities act provided certain conditions are met. In addition these two provinces have suspended the Rule until such time as appropriate legislative changes can occur. For those jurisdictions that do not formally recognize the MFDA as a self regulatory organization, suspending Rule 2.4.1 is neither an option nor necessary to achieve the objective of incorporation. Rather, in these jurisdictions the provincial securities commissions need only issue a Blanket Order allowing the payment of commissions and fees by a registered dealer to a corporation controlled by an individual registrant without the need for the corporation itself to be a registrant. In doing this, the playing field can be leveled across Canada for our members who reside and do business in provinces that both recognize the MFDA and in those provinces that do not.

We understand that the Ontario Securities Commission (OSC), Nova Scotia Securities Commission (NSSC) and the Saskatchewan Financial Services Commission (SFSC) will consider an extension of the Rule suspension until March 31, 2010, with a requirement that the MFDA submit proposed amendments that will address this ongoing problem by May 31, 2009. It is noteworthy that the staff of the OSC, NSSC and SFSC do not support any further extensions beyond 2010. Their view is that an expiry date of March 31, 2010 should provide sufficient time for MFDA Members and Approved Persons to restructure any arrangements to direct commissions to corporations to ensure compliance with the existing Rule, should the

MFDA not submit a proposal by May 31, 2009. While the desire on the part of these jurisdictions for prompt and decisive action is understandable, we believe that the Canadian Securities Administrators (CSA) jurisdictions that have formally recognized the MFDA, and those that have not, should bring forward a coordinated response.

The response of the OSC, NSSC and SFSC to the MFDA request is likely influenced by the long and ongoing dialogue over this issue, and the desire, which they share with industry, for a permanent solution. However, a failure on the part of the MFDA to meet the deadline set by the OSC, NSSC and SFSC could have significant and costly consequences for our members. Further, a failure on the part of the MFDA to meet the May 31, 2009 deadline could result in taking a step backwards as some jurisdictions may continue to extend the Order, with others choosing to enforce the existing Rule. The result would be a patchwork approach to the incorporation issue across Canada going forward. Advocis believes that a more effective approach of ensuring that the MFDA meets the deadline is for the CSA to ensure that the MFDA makes a permanent solution a priority and that they work with industry to achieve this goal. Any permanent solution will affect industry participants that are not direct members of the MFDA, and accordingly the broader investment community must be consulted early in the process.

Advocis is actively working with all relevant jurisdictions to promote the equal application of an exemption to the Rule, and to urge adoption of a permanent solution. To directly answer your question on what would be an appropriate date for the submission of rule amendments and the expiry of the suspension, we would suggest that the May 2009 deadline proposed by the OSC, NSSC and SFSC is reasonable as long as advisor incorporation becomes a priority and that the issue is dealt with appropriately by the MFDA and the CSA members. We would further suggest that any variation of the current Order should allow the Order to continue until it either is rescinded or a permanent solution is adopted. This approach is reasonable as CSA members must deal with a constant flow of new rules, polices, notices and amendments.

The fact that the current suspension Order has been in effect for a long time, coupled with the absence of identified problems resulting from the suspension, suggests that concerns for consumer protection are minimal. Further, adopting an ongoing interim approach to the suspension Order until a permanent solution is adopted would provide financial advisors and dealers with a higher level of comfort and lessen the compliance burden in that it would be one less regulatory item to monitor. While the removal of one item requiring regulatory monitoring for industry seems marginally significant, it would demonstrate that the CSA is aware of the compliance burden on industry and a need to resolve this matter expeditiously.

Advocis has a significant concern relating to the approach of the BCSC and other Recognizing Jurisdictions, in awaiting a proposal from the MFDA on proposed amendments to the Rule. For one, if a permanent solution involves a legislative proposal, then the MFDA will likely not present one in any detail as this is beyond their mandate. This is why it is important for the Recognizing Jurisdictions and the other CSA members to be at the table in devising the most appropriate approach for such a solution. Furthermore, the MFDA continues to demonstrate that its consultation process is inclusive primarily of its dealer members. We believe that the MFDA approach to policy development marginalizes non-MFDA members by excluding them from early discussion, consultation and participation. We consider this a serious oversight and a detriment to good policy development. This is a matter that we will continue to raise in arguing for a more inclusive policy development process. It should also be noted that the MFDA is not recognized in all jurisdictions across Canada, yet the proposed Rule change that the BCSC, OSC, NSSC and SFSC have requested of the MFDA may affect advisors from coast to coast depending on how those jurisdictions that do not recognize the MFDA respond. Advocis

is of the view that requests from senior regulators on how to deal with Rule 2.4.1 should canvass not only the MFDA, but all stakeholders.

We are in discussions with several securities regulators across Canada on the issue of incorporation of salespersons. As a national organization, we represent financial advisors from all jurisdictions in the search for a harmonized solution. It is important to the process and to fostering transparency that the CSA consult directly with stakeholders and more broadly on the subject of incorporation. Advocis would be pleased to continue its discussions on this matter and offer opinions and possible solutions that will both address the issue of continuing consumer protection and a level playing field which recognizes the business interests of all affected stakeholders.

Thank you for the opportunity to present our views on this most important issue.

Sincerely,

Steve Howard, CA
President and CEO
Advocis

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