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October 20, 2008

Douglas M. Hyndman
Chair
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia
V7Y 1L2

Dear Mr. Hyndman:

Re. Incorporation of Licensed Salespersons

I am writing regarding the issue of incorporation of licensed salespersons under securities legislation and further to our submission regarding the extension of the exemption to MFDA Rule 2.4.1 (*Remuneration, Commissions and Fees – Payable by Member Only*) dated September 29, 2008 in response to the Joint Notice and Request for Comment of Certain Recognizing Regulators of the Mutual Fund Dealers Association of Canada.

I would first like to take this opportunity to commend the British Columbia Securities Commission ("BCSC") for its longstanding decision to issue BC Instrument 32-503 which provides for a registration exemption for a salesperson's corporation in connection with receiving commissions and fees from a dealer, provided that the corporation and the dealer have a written contract under which the dealer is liable for the acts and omissions of the corporation that relate to securities business and various other conditions. We believe that this approach provides an appropriate balance between enhanced consumer protection and flexibility of advisors to conduct their business in an efficient manner. It has been the basis of discussions with other securities regulators that we have recently undertaken on the issue.

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.

We have supported the suspension of MFDA Rule 2.4.1. However, we share the view of many provincial securities regulators that a permanent solution is needed. Over the past several months we have been developing a proposal that we believe can form the basis of a permanent solution for incorporation that addresses the business interests of advisors, protects the consumer and ensures

the integrity of the capital markets. Please find enclosed a copy of our proposal “Incorporation of Financial Advisors: A Proposal to the British Columbia Securities Commission”. We have been in discussions with other securities regulators regarding our proposal to deal with the issue on a permanent basis.

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 ‘salesperson’. Further, most provincial securities legislation does not permit incorporated entities, or ‘sales companies’ to register for the purpose of making trades in securities (with the exception of Prince Edward Island’s Securities Act).

Our proposal is based largely on the approach taken by the BCSC and the proposed legislative changes that were considered under B.C.’s proposed 2004 Securities Act (which was not proclaimed) and includes amending the current Securities Act to change the definition of “salesperson” with the concept of a person (including a corporation) that trades in securities on behalf of a dealer and prescribes the conditions for a corporation to be registered as a salesperson.

BC Instrument 32-503 would then have the effect of exempting the corporation from having to register under certain acceptable conditions, which is optimal from an administrative compliance perspective (and which ideally should be harmonized against other jurisdictions as industry and regulators work toward a permanent solution).

In addition, our proposal would see the establishment of broad parameters for incorporation which would resemble the requirements for an incorporated life insurance agent, as many advisors are dually licensed for insurance and mutual funds or securities.

Advocis believes that any new rules or requirements should not constrict current practices in respect of the type of corporate structures currently in existence. At present, a significant number of mutual fund advisors in Canada use general purpose corporations to operate their businesses. Under the current provincial regulatory structures permitting incorporation, we are not aware of situations where mutual fund licensees operating through these corporate structures have impeded regulatory scrutiny of their business or shielded themselves from any obligations or liability to clients. Indeed, the research provided by the MFDA in support of the continued exemption of Rule 2.4.1 supports this position. Furthermore, these business practices have been undertaken in the absence of legislative requirements. Our proposed solution allows for this flexibility while maintaining a high degree of consumer protection. In this respect, Advocis has done considerable legal research on the issue of incorporation which we have

shared with other securities regulators, addressing many of the questions and concerns raised by these securities regulators (see Appendix – BLG LLP Memo to Advocis, Incorporation of Professionals in the Securities Industry, November 15, 2007). Advocis believes that Policy 32-503 provides the Commission with the appropriate conditions to ensure consumers are adequately protected, and would hope that this policy continues to be preserved.

Legislation around the definition of salesperson should remove any corporate veil issues but only against liability for market conduct related to the registered activity in the sale and distribution of securities. In addition, contractual provisions with prescribed terms can provide additional assurances that registrant salespersons will not seek shelter from their obligations behind the corporate veil. Those contracts would include undertakings and waivers that preserve the status quo of individual accountability and, in effect, reduce the corporation to a conduit for expenses and compensation, as has been the case for other professions and business groups.

Share structures should accommodate various shareholders and arrangements for ownership and, provided that an individual registrant remains accountable to the dealer, regulator and clients, the share structure of the corporate business vehicle should not be relevant.

We would be pleased to meet with you to discuss our proposal. In the meantime, should you have any questions, please do not hesitate to contact me. We look forward to working with the BCSC on this and other securities related matters of mutual interest.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Peter Tzanetakis". The signature is stylized and cursive.

Peter Tzanetakis
Senior Director, Regulatory Affairs

Cc: Sandy Jakab, Director, Capital Markets Regulation
Brenda J. Benham, Special Counsel, Market Relations