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November 20, 2008

Mr. Donne W. Smith  
Chair, New Brunswick Securities Commission  
85 Charlotte Street, Suite 300  
St. John, New Brunswick  
E2L 2J2

Dear Mr. Smith:

**Re: Incorporation of Licensed Salespersons**

I am writing in follow up 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, and the need for a permanent solution regarding the incorporation of licensed salespersons.

As you are aware, Advocis has been actively seeking the right of its members and all financial advisors across Canada to incorporate for some time now. Over this period of time we have been in contact and in consultations with various securities commissions with respect to a solution to this problem. We are very pleased that almost all jurisdictions in Canada now accept the proposition that the incorporation of licensed salespersons can both address the business needs of advisors without compromising consumer protection.

We would like to commend the New Brunswick Securities Commission (NBSC) for issuing *Blanket Order 32-501* (Order 32-501). Order 32-501 provides for a registration exemption for a salesperson 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. We also support the views expressed by the NBSC in its Variation Order dated March 25, 2008 which extends the exemption for MFDA Rule 2.4.1 until a decision or legislative amendment has been adopted that will provide a permanent solution. We believe the NBSC approach to this issue is one that Ontario and others provinces should adopt as setting arbitrary deadline beyond which some provinces will not extend the exemption can be counter productive.

Advocis has supported the suspension of MFDA Rule 2.4.1 and shares the view expressed by the NBSC, and other jurisdictions, that a permanent solution is needed. We are encouraged by the insistence of a number of provinces (the "requesting provinces") that the MFDA provide a proposal for a permanent solution by May 2009 as this will help move the process forward. Despite our support for moving the process forward, Advocis is concerned that only the MFDA has been requested to provide a proposal for a permanent solution. Our concern is two-fold. In

the first instance, the requesting provinces have indicated that they will not entertain any further extensions of the exemption to Rule 2.4.1 beyond what is currently being proposed by the MFDA (an extension to 2010). We agree that an extension to 2010 should provide ample time for a permanent solution to be crafted, yet there remains the possibility that the MFDA may not meet this deadline. In the event that the MFDA does not meet this deadline, the consequences will affect those far beyond the membership of the MFDA. This leads to our second concern. The MFDA represents a select group within the much larger investment advisory field, primarily its dealer members. Advocis often finds itself outside of the select group that the MFDA canvasses for early input in the policy development process. Accordingly, leaving to the MFDA the role of providing a permanent solution has the effect of marginalizing the voice and interest of significant stakeholders such as Advocis. In an attempt to rectify this problem, we are providing the NBSC and other jurisdictions with our proposal for a permanent solution to the incorporation of licensed salespersons.

Accordingly, please find enclosed a copy of our proposal "Incorporation of Financial Advisors: A Proposal to the New Brunswick Securities Commission" for your consideration.

Generally, provincial securities legislation does not permit incorporated entities or 'sales companies' to register for the purpose 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 (the exception being the Prince Edward Island Securities Act).

Our proposed permanent solution includes changing the definition of 'salesperson' in the securities act 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.

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 securities or mutual funds.

Advocis believes that any new rule 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 business. 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).

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.

As noted earlier, under Order 32-501, New Brunswick has exempted corporations from having to register under certain acceptable conditions, which is optimal from an administrative compliance perspective (which ideally should be harmonized against other jurisdictions as industry and regulators work toward a permanent solution). British Columbia, Manitoba and PEI have also provided similar exemptions. We believe that these exemption orders, which are similar in language and intent, provide the appropriate conditions to ensure consumers are adequately protected, and would hope that this be seriously considered as part of the permanent solution.

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 NBSC 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 fluid and cursive, with a large initial "P" and "T".

Peter Tzanetakis  
Senior Director, Regulatory Affairs