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VIA COURIER AND EMAIL: rday@osc.gov.on.ca

Robert Day
Senior Specialist, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 2200, Box 55
Toronto, ON M5H 3S8

Dear Mr. Day:

**Re: Ontario Securities Commission
Draft Statement of Priorities for 2014-2015**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Ontario Securities Commission ("OSC") in regards to its draft statement of priorities for 2014-2015 (the "Draft SOP").

A. About Advocis

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 11,000 members, organized in 40 chapters across the country, are licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to our published Code of Professional Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain professional liability insurance, and put their clients' interests first. Across Canada, no organization's members spend more time working one-on-one with individual Canadians on financial matters than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

B. Comments on 2014-2015 OSC Priorities

We would like to provide comments on the following initiatives in the Draft SOP. For convenience, the numbering below reflects that used by the OSC.

Deliver Strong Investor Protection

Investor protection is at the core of the OSC's statutory mandate, which requires it to foster fair and efficient capital markets and deter unfair, improper or fraudulent practices so that the investing public can have confidence in those markets. To that end, the Draft SOP prominently states that:

Investors should be able to expect financial services and products that meet their needs from firms that treat them fairly... The OSC needs to examine the investor experience and quality of advice being provided to investors.

We could not agree more that the quality of advice is a critical factor in the consumer's experience with the industry and his or her financial outcomes. Our longstanding concern is that under the current regulatory framework, anyone can hold themselves out as a financial advisor, or offer what they purport to be financial advice, regardless of their education, training or other qualifications.

As a consequence, the industry is filled with advisors of greatly varying quality, some of whom: (i) do not have any substantial training; (ii) neglect to complete continuing education to keep abreast of industry developments; (iii) do not adhere to a code of professional conduct and ethics; and (iv) fail to maintain errors and omissions insurance. These actors put consumers at risk, as studies have consistently found that most consumers believe that the title of "financial advisor" is regulated, with the provision of advice restricted to proficient practitioners. These actors also tarnish the reputation of professional advisors and the financial industry as a whole, making consumers reticent to participate in the capital markets.

We believe that consumers deserve better from the industry. In February 2013, we launched our Professions Model, which would require that all persons who are in the business of providing financial advice or planning to retail consumers belong to an accredited professional association and maintain such membership in good standing. Membership would entail commitment to a Code of Ethics, enhanced proficiency and continuing education requirements and a complaints and disciplinary process that empowers the association to suspend or cancel the advisor's membership.

The current regulatory framework is based on the regulation of financial products by sector, and is well-suited to addressing product innovation by manufacturers. However, it is not well-suited to addressing the retail consumer's experience. The reality is that most consumers do not think of financial services as segmented by product, and are not particularly interested in knowing that product x falls within the insurance universe and product y falls within the securities universe – instead, they want the advisor with whom they deal to be professional, knowledgeable and accountable. A dual-licensed advisor provides the consumer with the convenience of "one stop" shopping and provides the advisor with a more holistic view of the client's financial situation.

The existing framework's focus on product sector leaves consumers exposed because it creates regulatory "silos" that create vulnerabilities for unscrupulous actors to exploit. For example, if an advisor commits misconduct in selling mutual and receives a serious sanction to protect the public from his further misdeeds, such as a suspension of his registration, that same actor should not be able to continue operating unimpeded in a parallel sector, beyond the reach of the OSC or MFDA. But unfortunately, this can occur due to the current nature of Ontario's fractured regulatory system.

This glaring problem is addressed by the Professions Model, through its focus on the advisor-client relationship. In the scenario above, when the advisor's registration is suspended in the mutual funds sector, his or her membership in the professional association would automatically cease to be in good standing and as a result, the advisor would no longer be permitted to continue operating in a parallel sector for the duration of the suspension. This would create a comprehensive disciplinary umbrella that makes sanctions substantively more effective at achieving their goal of protecting the consumer. By focusing on the client relationship rather than the product sector, the Professions Model *complements* existing regulation, rather than duplicating it. It addresses a need that cannot be met by existing regulatory infrastructure.



Furthermore, the Professions Model would raise the bar for *all* financial advisors, represented by the outer circle in the diagram at left, by creating strong industry-wide baseline standards; it would also allow for further specialization in the industry, such as in financial planning, wealth management or estate planning, represented by the inner circles.

This "baseline proficiency with specializations" structure is analogous to that used in the medical field. To visualize this, the outer circle of all financial advisors can be replaced with the rigorous but baseline MD degree that all doctors must first achieve. Then, certain doctors may choose to specialize further, replacing the CLU, CFP and CH.F.C. inner circles with oncologist, cardiologist, and endocrinologist.

Some stakeholders in the financial services industry have argued that only the specializations should be regulated – but consider the potential impact on the public if this approach had been adopted in the medical field and anyone could claim to be a medical doctor without having appropriate levels of knowledge and training. This would clearly be an unacceptable outcome, jeopardizing the public's health, and we believe that this is similarly unacceptable when it comes to consumers' financial health. The Professions Model would create strong and enforceable standards for all financial advisors, whether generalists or specialists, ensuring that whomever the public deals with is a duly-qualified practitioner that is committed to professionalism.

The Professions Model is multifaceted, with benefits to consumers, advisors, regulators and product providers alike, and it began to come to fruition with the introduction of Bill 157, *The Financial Advisors Act, 2014* in February. With the provincial election called in May, progress on this iteration of the bill was halted; however, the principles underpinning the bill have garnered multi-party support and we expect it to be reintroduced following the election.

A critical factor to the bill's passage will be the support from key stakeholders, including the OSC. We would be pleased to meet with you to discuss our Professions Model in detail, address any concerns that you may have, and to work alongside the OSC in integrating the Professions Model as a key step in delivering strong investor protection.

Issue 1: Best Interest Duty to Investors

The OSC is continuing its research regarding the application of a statutory best interest, or fiduciary, duty on advisors and dealers. It is important that this debate be framed correctly: the question is not whether a client-advisor relationship can be a fiduciary one; it is whether *all* such relationships *must* be fiduciary, regardless of the circumstances surrounding that relationship.

We reiterate our position from our February 2013 submission:¹ a fiduciary relationship is the *highest* standard of care in law, requiring the fiduciary to act solely in the beneficiary's interests, without regard to one's own. It suggests a significant imbalance of power between the parties: the beneficiary of the duty is characterized as vulnerable and the fiduciary acts as a caretaker on the client's behalf.

The Supreme Court of Canada has stated that fiduciary obligations must be reserved for situations that are truly in need of the special protection that equity affords. These situations have been clearly set out by courts, through the articulation of key principles through case law by the nation's leading jurists. This common law approach strikes the right balance, recognizing that market participants such as retail clients are not homogenous and giving clarity as to which situations will invoke a fiduciary duty, all while protecting the most vulnerable that are in greatest need of its protections.

A statutory fiduciary duty would serve as a blunt instrument: by making all advisor-client relationships presumptively fiduciary, it would likely increase the volume of litigation brought against financial advisors (including nuisance claims), create enormous new compliance obligations that could overwhelm the industry and cause significant uncertainty regarding its interpretation. The result is that financial advice becomes less accessible to consumers, which runs counter to the public policy objective of promoting personal financial independence and retirement readiness.²

¹ <http://www.advocis.ca/regulatory-affairs/RA-submissions/2013/Advocis-Response-to-CSA-Consultation-Paper.pdf>.

² Time and time again, studies have proven that a key component of financial independence is working with a financial advisor. For example, in 2012, Professor Claude Montmarquette and Nathalie Viennot-Briot of the Centre for Interuniversity Research and Analysis on Organizations released Canada's largest and most scientific independent study to date on the value of financial advice, entitled *Econometric Models on the Value of Advice of a Financial Advisor*. The study provides strong evidence of the connection between financial advice and the accumulation of financial wealth. Amongst its findings:

- (i) Advice has a positive and significant impact on wealth accumulation, relative to non-advised persons. Households with four-to-six year long advisory relationships accumulated 58% greater assets, and households with 15+ year advisory relationships accumulated 173% greater assets.
- (ii) Advice is not exclusively for the wealthy. The median initial investment for the over 10,000 advised households in the study was only \$11,000.
- (iii) Advice positively impacts savings and retirement preparedness. Advisors played a key role in improving the savings behaviour of households in the study.
- (iv) Advice positively impacts levels of trust, satisfaction and confidence in financial advisors. That is, by working with an advisor, households are able to see directly the value of advice.

We would be pleased to provide the OSC with copies of the study upon request.

Further, a statutory fiduciary duty would fail to address the most serious gaps in consumer protection: with the title of "financial advisor" and scope of practice still unregulated, consumers would still be exposed to fraudsters who prey on the consumer's belief that someone holding themselves out in the profession is duly qualified. There would still be significant gaps in advisor proficiency and advice quality, and the lack of an effective industry-wide disciplinary process would still allow unscrupulous advisors to hop from one product sector to another to avoid regulatory sanction. These issues have the greatest potential to cause harm to consumers; they would not be impacted by a statutory fiduciary duty, but they would all effectively be addressed by the Professions Model.

Finally, we urge the OSC to be cautious in using the phrase "best interest": we understand the populist allure of saying, colloquially, that an advisor should act in a client's best interests – no layperson could argue with a statement like that on its face. However, as you are aware, the legal interpretation of a best interest standard is not so simple. We all wish to improve the industry, including the enhancement of consumer protections – but we believe the way forward is through the Professions Model rather than an overarching statutory duty. We would be pleased to work with the OSC to realize our shared ultimate objective.

Issue 2: Embedded Fees in Mutual Funds

We applaud the OSC and CSA in commissioning independent third-party research to help it assess whether regulatory changes are needed in connection with embedded compensation paid directly by mutual fund companies to brokers and dealers. As we stated in our submission of April 2013,³ this decision will have an enormous impact on the mutual fund industry and the ability of middle-income consumers to access financial advice, so it is a decision that should only be made after a careful consideration of the facts.

Along with the research aims identified by the OSC in the Draft SOP, the study should evaluate:

- (i) if the embedded compensation option is eliminated, whether consumers would be willing to pay directly for financial advice;
- (ii) the quantum to which consumers are willing to pay out-of-pocket for advice, and how that relates to the cost of actually providing that advice (including for the advisor's direct services and overhead such as compliance infrastructure and licensing fees);
- (iii) for those consumers that are not willing to pay a sufficient amount out-of-pocket for advice, how they would otherwise satisfy their investment and financial advisory needs; and
- (iv) the average wealth and investment portfolio size of consumers who currently elect to access professional advice via the embedded compensation option.

Once compiled, the data must be analyzed within the context of the value of financial advice. As discussed above, studies have consistently shown that accessing financial advice results in better financial outcomes for consumers.⁴ Not only are advised consumers better off financially

³ <http://www.advocis.ca/regulatory-affairs/RA-submissions/2013/CSA-Fund-Fees.pdf>.

⁴ *Supra*, note 2, as well as studies released by the Investment Funds Institute of Canada ("IFIC") in 2010 and 2011 that indicate a correlation between financial advice and higher levels of financial assets, retirement readiness and financial literacy among consumers. Amongst their findings, the IFIC studies

than their non-advised peers, advised consumers also report greater peace-of-mind and confidence in knowing that they are prepared to deal, financially, with life events. The OSC must also consider the public policy objective of encouraging consumers to be increasingly self-reliant in regards to their finances as governments, facing their own fiscal challenges, are less capable of providing social assistance.

Our position remains that the embedded compensation model should remain an option and that eliminating this route would cut off the ability of many consumers (particularly low-income consumers) to access professional advice and investing services. Concerns associated with embedded compensation, such as its potential to inappropriately influence the advice dispensed, can be effectively addressed by the Professions Model. We encourage the OSC to keep open a dialogue with stakeholders, including Advocis, as this issue develops in the upcoming year.

Issue 3: Point of Sale Disclosure for Investors

As the written consultation period for Stage 3 of the CSA's Point of Sale initiative has very recently ended, we will limit our comments here to a synopsis of our response to the CSA's March 2014 consultation paper. Please refer to our submission for our comments in full.⁵

While Advocis generally supports the Fund Facts program and the current initiative that would require its pre-sale delivery where appropriate (for example, when the client requests it, and not for typically low-risk investments such as money market funds), we are concerned with the CSA's proposition that calls for pre-sale delivery of Fund Facts for all mutual funds, regardless of what the client, or advisor-client tandem, determine is most appropriate.

We are also concerned about what is meant by "delivery". The CSA does not propose to mandate how Fund Facts is to be delivered or sent, stating that any conceivable method of actual delivery or electronic sending will be acceptable – that is, by mail, courier, email, fax or in-person delivery. An advisor should be able to fulfill delivery obligations by emailing the client a direct link to the specific Fund Facts document; however, the CSA has explicitly rejected the notion that "access equals delivery". This position is perplexing, given the current ease of access to all Fund Facts on websites, and given the fact that the pre-trade communications envisioned by Phase Two of the Client Relationship Model ("CRM2") are the obvious means by which the advisor can efficiently satisfy a Fund Facts delivery requirement.

In regards to the timing of Stage 3, we recommend the CSA hold off on requiring pre-sale delivery of Fund Facts, given the ongoing complex and resource-draining roll-out of CRM2. Stage 3 should also be delayed until the CSA has widened the scope of its point-of-sale disclosure project to include other investment funds, including exchange-traded funds and

reported that advisors: promote values that benefit clients throughout their investing lifetimes (such as the early adoption of a savings and investment mindset); help clients build wealth through tax-efficient plans based on asset mixes that are sensitive to clients' particular circumstances and risk tolerances; and contribute to the financial literacy of Canadians by taking the time to explain important concepts. The 2011 IFIC study concluded that these and other factors "provide net return advantages that exceed the additional cost for advice that is contained within the mutual funds or other financial products used by the investor."

⁵ To be posted at <http://www.advocis.ca/regulatory-affairs/submissions.html>.

closed-end funds, to bring them within the current "2 days" standard. Whenever possible, investor protection should not play out on an uneven playing field.

Issue 9: Serious Securities-related Misconduct

We support the OSC's efforts to address non-compliance and misconduct. As an association of financial advisors who voluntarily adhere to higher standards, we would be thrilled to see across-the-board improvements in the industry to deter and remove "bad actors" that tarnish the reputation of those who approach financial advice as a true profession. The OSC's resolve to bring forward more cases in the coming year involving fraud is a good start.

But to truly protect consumers, the OSC must recognize that more fundamental change is needed: even if the OSC develops the most effective enforcement process possible, consumers of financial services as a whole would still be exposed because that process would only apply to actors within the securities sector. Recall our earlier example of an advisor who commits misconduct in the securities sector and receives a serious sanction, but is able to continue operating unimpeded in a parallel sector, beyond the OSC's reach, due to the existing product-based regulatory framework.

We believe this sector-hopping represents unacceptable consumer risk. The type of serious misconduct which warrants an advisor's outright expulsion from one sector, such as fraud or gross negligence, speak to that advisor's conduct and ethics and are not sector-specific concerns; letting such an advisor continue offering "advice" is a disservice to the public. And even if that advisor is eventually identified and removed by other regulators in their respective sectors, that person can simply continue offering advice on an unlicensed basis since the scope of work is not protected; for example, he could "advise" clients to invest in an affiliate's ponzi scheme.

Consumers are also currently lacking an easy mechanism to verify their advisor's credentials and disciplinary history. While regulators do maintain websites where the public can search for information on their advisor (including the CSA's National Registration Search), the data is only applicable to the regulator's sector. As discussed above, the general public does not understand the difference between the various regulatory bodies and is not likely to canvass each one to look up their advisor. Revisiting our example, if a prospective client were to look up the advisor on only the insurance regulator's website, the client would not see the advisor's expulsion from the securities sector. The client might then mistakenly believe that the advisor's overall disciplinary history was clean.

Advocis strongly believes that consumers should have a one-stop access point for reviewing a prospective advisor's complete disciplinary history that is not limited to the domain of one sector's regulator. It must also capture those individuals who offer advice or planning without the sales of products who are therefore not registered with any existing regulator or SRO. That is, rather than being based on the archaic regulatory structure, this critical consumer tool must be designed from the consumer's point of view.

One of the key aspects of our Professions Model addresses this problem by capturing all financial advisors in a comprehensive publicly-accessible database. By focusing on the substance of the activity (financial advice and planning) rather than the product sector in which it occurred (such as insurance or mutual funds), consumers would be better protected as they would only need to access one central database to view their advisor's complete abstract. We

believe this enhancement is sensible and urgently needed, and the Professions Model would make this a reality.

Issue 11: Reduce Regulatory Burden

We are heartened to see the OSC recognize the impact of the regulatory burden on market participants – particularly on smaller, independent market participants such as the financial advisors we represent. The regulatory burden is forcing independent advisors out of the business, increasing the concentration of the industry in the hands of fewer, larger actors who are able to absorb regulatory costs, such as banks. The resulting loss of competition is a disservice to consumers as well.

We believe that the OSC's commitment to produce a regulatory impact analysis statement for each policy proposal is a step in the right direction. Because of their far-reaching impact, it is critical that regulators take a considered approach before implementing policies, which includes a vigorous consultation with all stakeholders. It is also important that regulators resist the pressure to undertake populist measures simply for the sake of demonstrating that they are "responding" to a perceived issue.

We recognize that regulators are in a difficult position, tasked with encouraging the functioning of the capital markets while also taking blame if consumers get hurt. What we ask is that when considering whether to undertake initiatives such as the statutory best interest duty or the banning of embedded commissions, the OSC focus on advancing the outcomes for the province as a whole, including being mindful of the unintended consequences of the growing regulatory burden on market participants. We also encourage the OSC to be open-minded in considering whether alternatives raised by third parties, such as our Professions Model, could be a better way forward.

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Advocis looks forward to working with the OSC as it implements the objectives identified in the Draft SOP for the coming year and beyond. We would be pleased to address any concerns or questions that you may have; please contact the undersigned or Ed Skwarek, Vice President, Regulatory and Public Affairs, at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
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