

December 16, 2020

Robert Day
Senior Specialist Business Planning
Ontario Securities Commission
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SENT VIA EMAIL

Dear Mr. Day,

**Re: Ontario Securities Commission
Request for Comments Regarding Proposed 2021-2022 Statement of Priorities**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Ontario Securities Commission's (OSC) Proposed 2021-2022 Statement of Priorities (the Proposed SoP).

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, and life, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.



2. INTRODUCTION

Advocis commends the OSC for its prompt and diligent response to the COVID-19 crisis, including introducing relief for late fees and extensions on filing and document delivery dates. We also congratulate the OSC on swift collaboration with other CSA members to introduce appropriate adjustments to the implementation dates for the conflict of interest and relationship disclosure provisions in the Client Focused Reforms.

We recognize that this has been a time of significant challenge and change within the financial industry. We appreciate the continued focus that the OSC has maintained on issues of importance to advisors and consumers, including enhancing innovation. With COVID-19 disrupting regular business operations in 2020, the pandemic has proven the importance of enabling innovative technologies that allow client service to continue without interruption, notwithstanding the inability to meet face-to-face or collect wet signatures. Done correctly, innovation can enhance conduct oversight and consumer protection while also supporting the OSC's regulatory burden reduction efforts.

While we have some suggestions for specific areas of focus, we are generally in support of the proposed priorities for 2021-2022, while recognizing that some adjustment may be required in response to the ongoing COVID-19 pandemic and initiatives such as the Capital Markets Modernization Taskforce. We also recognize that further changes may come with the appointment of a new OSC Chair in the coming year. We would welcome opportunities to work with the OSC and provide stakeholder input and support during this time of change.

3. OUR COMMENTS

We have the following specific comments in regards to the initiatives in the Proposed SoP:

1. Promoting Confidence in Ontario's Capital Markets

Continue Implementation of Client Focused Reforms (CFR)

Advocis supports the ongoing work of the OSC to implement the CFRs, particularly with respect to the development of guidance for registrants, including by gathering and publishing responses to frequently asked questions. In particular, we encourage the OSC to work with other CSA members as well as IROC and the MFDA to develop clear, consistent guidance for advisors and their clients and work to take a harmonized approach to compliance once the CFRs are fully implemented.

Specifically, we are concerned that the "best interest" obligation introduces a level of ambiguity and potential risk for advisors and their clients. A best interest duty is a professional standard



of care meant to ensure that a client receives the utmost in their advisor's care and judgment. It necessarily involves subjective assessments that consider the client's objectives, risk tolerance and financial position, as well as the market conditions known at the time and projected out into the (sometimes distant) future. The breaching of a best interest obligation creates significant ramifications for the client, advisor, and the reputation of the industry as a whole.

Although we still feel that a best interest duty is best interpreted and enforced by a professional body of peers who have an understanding of the real-world practice dynamic in play when advisors make recommendations, we believe this is also an opportunity for guidance to help clarify the regulator's position on how this standard will be applied. Specifically, we hope that the guidance will take a holistic approach to determining a client's best interest, rather than reducing this complex assessment to one that overemphasizes the "lowest cost."

While financial advisors understand that a product's cost is an important factor to consider, it is just one of many factors at play in determining whether a particular product is "best" for that client. These additional factors include the client's personal risk tolerance or risk profile, time horizon and financial objectives, in conjunction with the characteristics of the product, such as its structure, strategy and tax treatment, and a consideration of the fund manager's experience and past performance. We encourage the OSC to work with the CSA to develop guidance for the CFRs that acknowledges and identifies the role that these qualitative factors can play in assessing a client's best interest.

Advocis also supports the OSC's work to implement a regulatory framework that would address issues of financial exploitation and diminished mental capacity among older and vulnerable investors. We think that it is appropriate to integrate new rules around Trusted Contact Persons (TCPs) to an enhanced KYC process by the end of 2021, along with rules and guidance around temporary holds. However, we hope that as part of further work on this issue, the OSC works with the CSA and with federal and provincial governments to ensure that a legal "safe harbour" protection exists for registered individuals and firms who contact a TCP or use a temporary hold in good faith and in compliance with securities regulation. The safe harbour should apply both to regulatory and civil liability.

We also encourage the OSC to consider lending their support to the initiative to protect the titles of "financial planner" and "financial advisor" currently undertaken by the Financial Services Regulatory Authority of Ontario (FSRA). By ensuring that titles such as "financial planner" and "financial advisor" are only used by individuals with appropriate qualifications, oversight and a commitment to professionalism, title protection would limit the ability of unqualified individuals to hold themselves out in a manner that deceives or misleads the consumer. In our view, the title protection initiative complements the enhanced relationship



disclosure contemplated in the CFRs and offers additional clarity and protection for the investing public.

Continue Consultation on the Current Self-Regulatory Organization (SRO) Framework

We support the OSC's work with the CSA on the review of the SRO framework. In our view, the move towards a consolidated SRO is necessary and long overdue. With increasing pressures of globalization, digitization and emerging systemic risks, including COVID-19 and the recent financial downturn, we feel that Canadian investors deserve a regulatory framework that is responsive, flexible, and proportionate.

We feel strongly that the current focus on product-based regulation is a barrier to innovation, effective investor protection, and the accessibility of financial advice for all Canadians. While a consolidated SRO only mitigates some issues stemming from this product-focused approach, we feel that it offers an opportunity to meaningfully level the playing field for the industry and will lead to opportunities for investors that align better with their financial needs and goals.

We feel that the need for a consolidated SRO is evident. We encourage the OSC to work with the CSA and act with urgency to implement a single SRO that can respond effectively to the changing needs of Canadian businesses and investors.

Implement Mutual Fund Embedded Commissions Policies and Ontario Regulatory Response to Deferred Sales Charges (DSC)

Advocis supports the OSC's efforts to retain the DSC option for those investors who could benefit from its use, while maintaining reasonable safeguards to mitigate the risks that have been associated with it. In our view, these safeguards would be enhanced by pairing restrictions on the types of clients and accounts that can access the DSC option with enhanced standards for the professionals that will be permitted to offer it.

Specifically, we encourage the OSC to consider leveraging the Ontario Government's efforts to increase the professionalism of Financial Advisors and Financial Planners to ensure that the intermediaries who qualify to use the DSC are educated, competent and committed to professionalism. We also note that FSRA is currently reviewing the rules around segregated funds. We encourage the OSC to work with FSRA to develop a harmonized approach that would mitigate regulatory arbitrage opportunities between the investment fund and segregated fund industries.

Improve the Retail Investor Experience and Protection

Advocis supports the OSC's continued focus on improving the retail investor experience and investor protection. We commend the work undertaken recently by the Investor Office,



including its contribution to the CSA's proposals to enhance protections for vulnerable investors. We are encouraged that regulators are recognizing the importance of the advisor-client relationship and the role that advisors play in serving vulnerable clientele.

We encourage the OSC to consider integrating improvement and protection for retail customers into other high priority areas. For example, we feel that this objective should also be considered alongside efforts to enable innovation and improve financial education. While disruption is prized in innovation, it can be very challenging for the ordinary investor to navigate, especially in times of market volatility. As technology improves and investing is democratized, financial education and consumer support must keep pace.

Financial advisors are the intermediaries in the financial services sector that work most directly with consumers. Our members have a critical perspective to share about what consumers are looking for, where they are in need of the most help, and how product manufacturers are responding to changes in consumer preferences. Given the important client-facing work our members do, we would welcome further opportunities to work with the Investor Office.

We also congratulate Mr. Tyler Fleming on his recent appointment to chair the newly formed Ontario Intragovernmental Committee on Financial Literacy (ICFL). COVID-19 has created unprecedented challenges for investors, and we are encouraged to see collaboration across the provincial public sector on this important initiative. In working with consumers across the table, it is our members who take the time to explain financial products, the regulatory framework and the consumer's rights and responsibilities in navigating the sector.

We would welcome opportunities to assist with this new initiative, given the essential role that our members play in consumer education. In addition to delivering financial education as part of their regular practice, our members are often active and engaged members of their local communities, including in rural and remote areas. Our membership could provide a trusted, local connection to help implement a broader financial literacy plan.

2. Reducing Regulatory Burden

Advocis recognizes and applauds the excellent work that the OSC has been doing to reduce regulatory burdens, both through the Burden Reduction Task Force and with its CSA counterparts. We are encouraged to see this remain a high priority for the regulator and believe that there are many additional opportunities for regulatory burden reduction through



efforts such as the SRO review and increased harmonization and collaboration between CSA member jurisdictions.

As part of future regulatory burden reduction plans, we urge the OSC to reconsider the reporting regime for outside business activities (OBAs) and develop harmonized standards with its CSA counterparts.

For example, the current OBA regime captures activities such as the following, none of which we feel appropriately represent the consumer protection concerns that the reporting requirements were intended to capture:

- Coach of a child's sports team
- Committee chair of a college graduation class, responsible for planning reunions
- Convenor of a social club, arranging for guest speakers for events
- Director of a condominium corporation

To reduce the regulatory burden associated with OBA reporting, we recommend that the OSC work with its CSA counterparts on a more consistent and harmonized approach to OBA reporting and filing that includes: (i) a materiality threshold for reporting OBAs; and (ii) a grace period for reporting material OBAs. We recognize that the OSC currently has a moratorium on late filing fees as a temporary measure, which we see as a step in the right direction. However, the temporary moratorium expires on December 31, 2021, and we would like to see the OSC develop some permanent solutions to this issue.

3. Facilitating Financial Innovation

The current pandemic has shone a spotlight on the need for regulators and industry to accelerate their adoption of technology and take an open-minded stance to innovation. Financial technologies are rapidly evolving and responding to changes in consumer appetites, aiming to provide the services that clients want, in the manner that they want them.

We encourage the OSC to lend support to open banking and open data consultations and initiatives, both domestically and abroad. Democratizing access to financial data both enables innovation and provides consumers with greater knowledge and ownership of their own information. For open data initiatives to be successful, governments and regulators must be fully engaged in the process. We hope that the OSC will express support for concept of open banking, given the potential benefits for consumers and the financial services industry.

We believe that the creation of the LaunchPad and the Office of Economic Growth and Innovation are major accomplishments that demonstrate the OSC's leadership in fintech and regtech innovation efforts in Canada. We also commend the OSC's efforts to foster innovation



internationally, including through co-operation agreements with similar initiatives in the United Kingdom and Australia.

Advocis welcomes the opportunity to assist with these initiatives. We are encouraged by the OEGI's emphasis on enhancing stakeholder engagement and feel that we can assist with many of the OEGI's initial focus areas by leveraging the expertise of our membership, including the Advocis' Technology Task Force (TTF). The TTF was created in 2017 and is composed of tech-savvy Advocis members. Its mandate is to explore the opportunities of modern technologies such as artificial intelligence and machine learning and analyze their impact on financial advice. The TTF's research supports our advocacy efforts for a better regulatory environment as we believe that both financial advisors and consumers can benefit from technologies through greater access to financial services, increased choice in services and a more competitive landscape.

Advocis would welcome opportunities to support the OEGI's work with novel business methods, especially where there is potential to enhance investor knowledge and streamline intermediation. While innovation has increased the number of fully digital solutions in the industry, IIROC's Access to Advice survey found that 74% of investors need their advice to come from a human¹. Perhaps as a result, many emerging tech products aim to serve advisors rather than engaging directly with the end investor. We can provide insight into both the advisor and the investor experience, and we look forward to working closely with the OEGI to find innovative ways to expand access to high-quality, tailored, and affordable financial advice for all Ontarians.

4. Strengthening the OSC's Organizational Foundation

The recent COVID-19 pandemic and other global challenges have highlighted the need for a regulator that is appropriately staffed, resourced, and digitized. We are pleased to see that the ongoing modernization of the OSC's technology platform remains a priority and hope that the creation of the Digital Solutions Branch will accelerate this process. In our view, increased digitalization offers opportunities for enhanced regulatory responsiveness, reduced regulatory burden, and greater organizational efficiency. We appreciate and support the OSC's efforts to become a more data analysis-focused and evidence-based regulator.

¹ IIROC, https://www.iiroc.ca/investors/Documents/AccessToAdvice%20Presentation_en.pdf



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We feel that the OSC has set forth a promising agenda for the coming year, although we recognize that these priorities may be amended as the COVID-19 situation continues to evolve and as the Capital Markets Modernization Taskforce prepares to release its final recommendations. We look forward to being part of that conversation and welcome opportunities for collaboration. Should you have any questions, we invite you to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

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