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VIA E-MAIL

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Ms. Julia Dublin, Senior Legal Counsel
Ontario Securities Commission
20 Queen Street West
19th Floor
Toronto, Ontario
M5H 3S8

Dear Ms. Dublin:

Re: Fair Dealing Model

Thank you for the opportunity to comment on the Fair Dealing Model (FDM) concept paper that was released on January 29, 2004. We are pleased to be able to convey our thoughts on an initiative that will have a major impact on our members.

Before I provide our specific views, it may be helpful to provide some background on Advocis.

Background

Advocis is the largest professional membership association of financial advisors in Canada. As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis promotes the interests of separate designating bodies such as the Association of Investment Management and Research (AIMR), the Financial Planners Standards Council (FPSC), the Chartered Life Underwriter Institute of Canada (CLU Institute) and the Canadian Securities Institute (CSI).

Our Association traces its origins to the founding of the Life Underwriters Association of Canada (LUAC) in 1906. Advocis continues an uninterrupted history of serving Canadian financial advisors, their clients and the nation for almost a century. The Association operates under the legal name of The Financial Advisors Association of Canada and carries on business as Advocis.

Our members are financial advisors licensed to sell life and health insurance, mutual funds and other securities. Advocis comprises 16,000 voluntary members, organized into over 50 chapters. Advocis' members provide financial products and services to over 12 million Canadians. Our common goal is to assist individuals and families to achieve their financial objectives security through the optimal application of individual and group financial products.

In Ontario, we have approximately 9,000 members, organized in 26 chapters.

Overall Assessment of the Fair Dealing Model

Overall, Advocis applauds the OSC's efforts to update an outdated regulatory system and supports the three principles on which the FDM is based:

- 1) There should be a clear allocation of responsibilities;
- 2) All dealings with retail investors should be transparent; and,
- 3) Any conflicts of interest should be managed to avoid self-serving outcomes.

Advocis views the FDM as an ambitious effort to re-regulate financial services based on the provision of financial advice. The FDM takes into account a variety of current and evolving client relationships and seeks to clarify the role and expectations of advisors and clients. The FDM speaks to the importance of the client advisor relationship and makes recommendations about increased disclosure and increased transparency. Advocis strongly supports the move away from a rigid transaction-based approach on which the current regulatory system is based.

Under existing securities regulation, the suitability of advice is largely mandated under "know your client" (KYC) form and suitability screens. The FDM proposes to eliminate existing KYC and suitability procedures and recommends that more specific, detailed point of sale information be provided to the client. Advocis agrees that the existing procedures and information are too often mechanical and subject to manipulation but cautions that the FDM's recommended changes to the point of sale information will not be in the client's interest if new ways are not devised to motivate the client to read and understand the supplied information.

Advocis has a number of specific concerns that leads it to the conclusion that the FDM, as currently constituted, is not an acceptable approach to the regulation of the retail investment industry. For the FDM to serve that role a number of major recommendations need to be reformulated.

The following sections will elaborate on these issues and then suggest how the FDM could elevate the standards of the industry to ensure greater investor protection and to enhance the ability of professional advisors to serve their clients.

Investor Protection

The current regulatory system is extremely costly and fragmented. Close to 40 individual agencies are responsible for regulating the companies and advisors in the financial services sector. Approximately \$1 billion a year is spent annually by the numerous regulators. This amount does not include the compliance costs incurred by companies and advisors. Due to increasing regulation, Advocis members have witnessed their compliance costs and time escalating by up to 40 per cent over the last three years. Implementing the FDM will exacerbate this problem of increasing regulatory costs. Previous cost increases have resulted in advisors not being able to provide service to their clients with smaller portfolios. Consequently, access to advice is denied to the very investors who benefit the most from professional financial advice. Advocis, therefore, can not support the addition of yet another layer of prescriptive regulation on top of the existing regime, which will reduce the number of investors who are able to seek financial advice.

The FDM, in fact, does not address the concerns of most small investors – more rigorous enforcement and restitution. Moreover, many investors are of the view that there are sufficient rules and regulations in place currently and that implementing additional rules, as the FDM proposes to do, will not result in greater investor protection.

The cost benefit study, that is required for every initiative the OSC proposes, has yet to be drafted for the FDM initiative. We will be thoroughly analyzing this study when it becomes available. We will be interested to see if the FDM cost benefit study concludes that the FDM recommendations, as currently constituted, will result in a net benefit to consumers.

Professional Competence

The FDM attempts to establish competence in providing financial advice as a fundamental regulatory requirement. It, however, fails to define who is qualified to give financial advice and what standards should be in place to measure whether consumers are receiving appropriate advice.

The FDM proposes an external framework for the regulation of advice givers in their relationship with consumers of financial advice. Advocis supports the OSC's efforts to ensure competency in advice giving and to exclude unsuitable individuals from practice. At the same time, Advocis is strongly of the view that the regulators must defer to expert standard-setting institutions to validate the specific knowledge and skills that are needed to practice.

At present, in Ontario, regulation-specific industry standards of competence are required only for investment counsellors and portfolio managers. Individuals who practice or supervise practitioners in those disciplines must complete the Canadian Investment Management Program of the Canadian Securities Institute and the first year of the Chartered Financial Analyst (CFA) Examination Program offered by the Association for Investment Management and Research (AIMR) or complete the CFA in its entirety. Apart from British Columbia and Quebec, no Canadian jurisdiction requires individuals who hold out as financial planners to hold a designation.

Established specialized designation granting bodies in the financial services sector currently set forth proficiency standards and best practices of expert financial advisors on a national basis. These professional accrediting organizations, not a regulator, are best able to validate an advisor's initial and continuing competence requirements and further public regulatory objectives. As national bodies, these recognized accreditation organizations are able to advance uniform regulatory objectives and standards across all jurisdictions. For example, the Financial Planners Standards Council (FPSC) released its Practice Standards for Certified Financial Planners (CFPs) in October 2003. All CFPs in Canada will be required to abide by these standards as of April 2005.

We would like to stress that the certifying educational entities -- particularly the FPSC, AIMR and the Chartered Life Underwriter Institute (CLU Institute) -- should have a singular focus: the maintenance of the standards for those who hold out that they are qualified to give advice in their respective areas.

In our view, only advisors, acting through their recognized expert institutions, can establish standards of competency in the practice of financial advice. Industry designations certify that individuals have satisfied the requisite standards. Advocis believes that requiring adherence to the initial and continuing requirements of an approved designation granting organization is a critical element in any effective scheme of regulation for financial advisors.

Professional designates of these organizations have adhered to a code of professional conduct as a condition of membership for several decades -- in some jurisdictions even before the introduction of a licensing regime. To supplement the requirements of designation-granting bodies, Advocis has recently developed a “Best Practices” manual to encode the elements of regulatory compliance and define such generally accepted practices that would serve as the application standards for investment advice, financial planning and insurance underwriting. We believe such a body of knowledge, originating with the accepted best practices of leading practitioners within the industry, can advance consistent and effective compliance with standards that are appropriate to the clients’ needs. Advocis will continue its efforts to “raise the bar” in terms of increasing professional standards for financial advisors.

The proper role of regulation in the provision of advice is to require that practitioners adhere to defined specific standards, to identify practitioner-driven organizations that credibly set consistent standards in their respective advisory disciplines, to require advisors to adhere to those standards as a condition of practicing in a discipline and to remove from the market individuals who fail to adhere to those standards.

One approach to achieving these objectives is to establish a dedicated professional body -- a process of coordination among professional bodies, i.e. a governing council which would have responsibility for developing and enforcing standards of conduct and proficiency in the provision of financial advice. This model would include professional designations and the associations that support them and would promote direct accountability between the consumer and the individual providing advice. Advocis is suggesting that this accountability may be established by embedding appropriate recognized designations as a requirement to “hold out” the ability to offer prescribed advice. Advocis’ proposal also calls for granting the professional accrediting bodies the legislative authority through a governing council to regulate financial advisors and planners.

Instead of the high-cost, intrusive FDM approach, a far better alternative would be to build on existing structures. This can be readily achieved by granting the current accrediting bodies the regulatory authority for overseeing the competence and conduct of advisors formally in legislation and by requiring that advisors qualify for professional accreditation as a condition of practice.

The FDM does not provide a framework for defining how the consumer can recognize a qualified advisor of good professional standing and offers only the court system as the only remedy to bad advice – a costly and time consuming endeavor.

Conflict of Interest

Dealers and other financial distributions firms have cited their frustration in having to assume responsibility for monitoring and enforcing market conduct standards for their representatives. Despite high and ever increasing expenditures incurred by individual firms, their compliance efforts have resulted in fragmented and variable standards whereas the Canadian consumer has a right to expect certainty and consistency. Conflicts of interest occur because dealers are motivated to maximize their product revenue while still ensuring that their advisors are complying with regulations. Moreover, dealers, in turn, are regulated by the Mutual Fund Dealers Association (MFDA) and Investment Dealers Association (IDA). The IDA, as both a trade association and a regulator, acts primarily to promote the industry while at the same time regulating members' conduct. As such, it is difficult to believe that the objectivity of the IDA can be maintained. If financial planners were to be monitored by a governing council as suggested, these conflict of interest problems would be resolved.

Single Service Provider Licence

Advocis opposes a single service provider licence since the separate licencing systems that currently exist take into account the differences in the individual financial services sectors. Once again, we emphasize the importance of implementing an accreditation strategy whereby advisors would be required by legislation to have a professional designation, whose standards would be upheld and elevated as the industry evolves, by the existing professional accrediting bodies.

Furthermore, we reject any attempt by the regulators to determine the competency of financial advisors by an examination or other methods. We believe this approach is ill founded for the following reasons:

- 1) it is not the job of regulators to set and verify professional standards;
- 2) the cost and complexity of such an approach would far exceed the benefit to the consumer;
- 3) such as system would only be able to determine how planners hold themselves out not how they practice; and
- 4) this initiative would duplicate an existing system of professional accreditation that is extremely effective.

Advisor Compensation

Proposals to convert the existing dominant model of compensation, from one where product manufacturers pay sales commissions and trailer fees to sales intermediaries, to a model where clients pay negotiated compensation directly to advisors will be unacceptable to the great majority of product manufacturers, advisors and financial consumers alike. Instead of such a drastic measure, Advocis recommends a more gradual approach whereby the first step would be disclosure of sources of compensation. This would provide an opportunity for the market to move towards greater uniformity of compensation payment methods and a growth in consumer awareness.

Most advisors operate under a business model where the value of their business and their retirement and succession planning are based on a predictable stream of trailer fees. Regulators should be cautious about implementing regulations that will adversely impact future economic activity. Moreover, we are aware of no compelling evidence of consumer demand for this change.

Need to Regulate Financial Advisors

The majority of financial advisors are already subject to securities regulation because they utilize products regulated under the securities acts to implement the financial advice they provide their clients. We would question the utility of extending this regulation to the more encompassing act of advice giving.

There are two fundamental types of advice available in the Canadian financial services industry today -- product advice and financial management advice.

Advisors involved in the sale of a financial product provide product advice. Typically, the advice extends to the benefits and application of the financial product in the client's circumstances, but ultimately results in some form of product recommendation. Some product advisors only provide product advice, but many also provide financial management advice as a separate and distinct activity from product sales. Product advice can generally be categorized as:

insurance

- life and health, and
- property and casualty.

investment

- securities, and
- mutual funds.

Financial management advice may be provided by advisors licensed to sell financial products or by advisors with no involvement in product advice. Whichever advisor provides the advice, this type of advice is not grounded in product sales.

Financial management advice can consider all aspects of an individual's affairs, commonly referred to as comprehensive financial planning, or focus on one or more elements of an individual's affairs:

- personal financial management (i.e., budgeting, cash flow management, debt management, net worth assessment),
- retirement planning (i.e. strategies to identify and achieve retirement goals),
- wealth management (i.e., investment planning, asset allocation strategies, risk tolerance),
- tax planning (i.e., strategies to maximize value of after-tax net worth),
- estate planning (i.e., strategies to preserve and distribute accumulated assets), and
- risk management (i.e. determining financial risk at death or disability, insurance planning).

Currently, there is no regulation in place for non-product advice. The regulation of this advice has been attempted by existing product regulators, but with limited success. Their experience in the regulation of sales activities and products is not the type of experience that is required to govern financial management activities. These non-product activities require a form of governance that is more similar to other advisory professions like accounting and law than to the sales and marketing professions.

Other Issues

The FDM has an opportunity to correct a number of issues related to securities regulation that distort the advisor-client relationship and reduce independent owner-operators of multi-line financial services firms to the status of employees of a securities dealer. Frequently cited problems are as are:

- the misleading presentation of a firm's business name and activities in relation to a dealer;
- dealers that abuse regulatory control over advisors for commercial gain (referred to as "predatory regulation");
- the inability of financial advisors to incorporate; and
- the ownership of client accounts, books and records. (It is Advocis' position is that it should be as easy for the clients who prefer to transfer with the advisor to the new dealer as it is for those who prefer to stay with the former dealer and accept a new advisor.)

It is Advocis' hope that the FDM can correct these anomalies and create a platform for the regulation of entrepreneurial professional financial advisors that is consistent with actual client relationships and expectations.

In conclusion, Advocis is of the view that the FDM fails to recognize advisor independence, to foster a uniform system of regulation, and to take advantage of standard-raising and cost savings that would result by using a professional accreditation strategy that now exists.

On behalf of Advocis and its 16,000 members, I thank the OSC for inviting us to participate in this ambitious project and look forward to continuing dialogue and cooperation.

Yours sincerely,

A handwritten signature in black ink, appearing to be a stylized name, possibly "Advocis" or similar, written in a cursive style.