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Marsha Gerhart
Vice-President, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
121 King St. West, Suite 2000
Toronto, ON M5H 3T9

Sent via email: mgerhart@iiroc.ca

Dear Ms. Gerhart,

Re: IIROC White Paper – The Public Policy Implications of Changes to Rules Regarding Proficiency Upgrade Requirements and Directed Commissions on the IIROC Platform

Thank you for the opportunity to provide comments on the Investment Industry Regulatory Organization of Canada's (IIROC) White Paper. Advocis is supportive of progressive regulatory initiatives and is pleased that IIROC too is open to reviewing regulatory reform through a progressive lens.

Unfortunately, we believe that the White Paper has not addressed a number of critical elements in its policy review. In the first instance we would note that absent from the discussion is any reference to the work that Advocis has done for financial advisors across Canada in promoting the concept of advisor incorporation in conjunction with ensuring that consumer interests are not at risk. Advocis has been working on the issue of advisor incorporation for over ten years. Indeed, the length of time it has taken for regulators to deal with this policy issue illustrates our second issue, and that is the absence of financial advisors' involvement in their own oversight – a matter we refer to as regulation without representation. We will expand on both of these issues below.

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 over 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 a professional Code of 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 on financial matters with individual Canadians than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

Introduction

We commend IIROC for considering more efficient ways of harmonizing securities regulation that would align its platform with the rest of the financial services industry, including the possibility of allowing financial advisors to direct commissions into their personal corporations. Advocis believes that IIROC should look at the incorporation model in the insurance sector, as well as the current provisions in the Mutual Fund Dealers Association of Canada (MFDA) Rule 2.4.1.

Today, most professional financial advisors hold multiple licenses that allow them to provide holistic and extensive product knowledge to fulfill their clients' financial planning needs. These plans may include wealth accumulation and/or insurance products that will help them save for retirement or prepare for unexpected life events. However, the current regulatory framework was developed based on silos that separate the insurance and securities sectors. This approach has led to multiple distribution channels that focus on product regulation rather than on the advisor/client relationship, which has resulted in inappropriate regulation and overregulation of financial advisors.

We believe that the time is right to consider changes to a regulatory structure in which financial advisors are regulated by several regulators to a model of self-regulation. This will reduce the regulatory gaps, will harmonize requirements with those of other platforms and will standardize proficiency requirements. We would direct IIROC to both the Advocis submission to the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives¹ (Expert Committee) and Ontario Bill 157, the *Financial Advisors Act, 2014*², which received unanimous support on Second Reading and was sent to Committee prior to the call of the last provincial election. Both our submission and Bill 157 supported a regulatory reform whereby financial advisors would belong to a professional body that oversaw their conduct. This proposed move to a more self-directed regulatory environment is not at all unlike what led to the creation of the then Investment Dealers Association of Canada (IDA) and the MFDA, wherein it was recognized that the industry had evolved to a point where brokers and dealers were better placed to oversee their own regulation, yet were still accountable to government. We believe that financial advisors and our industry have evolved; the close to 40,000 financial advisors in Ontario, and close to 100,000 financial advisors across Canada, are likewise at a point where self-regulation is warranted as the current method of regulation is harmful to both consumers and financial advisors.

¹ To view our submission please go to: <http://www.advocis.ca/regulatory-affairs/RA-submissions/2015/Advocis-Submission-Expert-Committee-Sep15-with-Appendix.pdf>

² Online at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2934

IIROC's Exemption from Upgrade Requirement – Proficiency Considerations

Part of the IIROC White Paper's considerations to make the delivery of securities regulation in Canada more efficient is their proposal to eliminate the proficiency upgrade requirement for restricted mutual fund and ETF representatives. While these considerations resulted from a proficiency upgrade exemption granted in November 2013 (an exemption that was later withdrawn), the initial exemption application led to further regulatory and public policy discussions. Consequently, the Canadian Securities Administrators (CSA) asked IIROC and the MFDA to consult with their respective members on whether investment dealers should be permitted to employ mutual fund restricted dealing representatives.³

IIROC surveyed (the Survey) its Members (Brokers and Dealers) on the potential positive and negative implications on investors, Dealers and financial advisors that could arise from the elimination of the proficiency upgrade requirement. Among the responses provided by Members, IIROC's White Paper indicates that respondents realize that the elimination of proficiency requirements could lead to "fewer mutual-fund only firms on the MFDA platform, potentially leading, *as noted by Survey respondents* (emphasis added), to the MFDA becoming less economically viable."⁴

The MFDA also consulted with its Members (Brokers and Dealers) on the exemption from upgrade requirement. The MFDA's *Summary of Comments Regarding IIROC Exemption from Upgrade Requirement/Elimination of Upgrade Requirement*⁵ provides a summary of Member responses on the impacts of removing IIROC's upgrade requirement and the impacts on the regulatory structure. Among the responses, Members identified that "reconsideration of current SRO structure should be driven by investor protection and regulatory concerns not dealer cost savings or exemptions."⁶

Advocis believes that the issue is not about whether the proficiency requirement upgrade is eliminated or if exemptions are granted. Rather, the issue is about protecting consumers and holding financial advisors to a higher standard, regardless of the product an individual purchases based on the advice received from the advisor. In our *Raising the Professional Bar*⁷ consultation document we establish how financial services policy regulation can become more efficient through the professionalization of financial advisors. And in our recent submission to the Expert Committee, we propose the creation of a delegated administrative authority (DAA) responsible for overseeing the provision of financial advice and for establishing standards and requirements for all financial advisors. Under this new structure, there would be no need for IIROC or MFDA oversight of individual financial advisors, thus allowing both IIROC and the MFDA to focus their resources and regulatory expertise on regulating brokers and dealers.

³ IIROC White Paper P. 3

⁴ Ibid. P. 12

⁵ Online at <http://mfda.ca/regulation/comments/SummCommentsIIROC.pdf>. Link to document provided on MFDA Bulletin #0675 – P. Accessed on March 3, 2016. No date given for publication.

⁶ Online at <http://mfda.ca/regulation/comments/SummCommentsIIROC.pdf>

⁷ To download a copy of Advocis' *Raising the Professions Bar* please go to: <http://www.advocis.ca/raisethebar/raise-the-bar.aspx>

Directed Commissions – Leveling the Playing Field

Advocis supports the concept of advisor incorporation.

Until amendments are made to provincial securities acts that would allow for incorporation we are fully supportive of any amendments to IIROC Rules that would be consistent with those of the MFDA. For example, MFDA Rule 2.4.1 provides the necessary measures that allow financial advisors to receive their commissions through their personal corporations while ensuring consumer protection practices remain in place. These measures include⁸:

- a) Approved Persons can only receive their commissions directly from their Member Dealer;
- b) Commissions can be paid by the Member provided that:
 - such arrangements are not prohibited or limited by securities legislation or securities regulatory authorities;
 - the corporation is incorporated under the laws of Canada or province or territory of Canada;
 - the Member, Approved Person and the unregistered corporation have entered into an Agreement in writing, in a form prescribed by the Corporation, in favour of the Corporation, the terms of which provide that:
 - the Member and Approved Person shall comply with applicable MFDA By-laws and Rules and securities legislation;
 - the Member [engages] in appropriate supervision with respect to the conduct of the Approved Person and the unregistered corporation to ensure such compliance as referred to [above];
 - the Approved Person and the unregistered corporation shall provide the Member, the applicable securities commission and the MFDA with access to all books and records maintained by or on behalf of either of them for the purpose of determining compliance with MFDA Rules and applicable securities legislation.

Historically, advisors in the insurance sector have been allowed to incorporate, and more recently so too have advisors on the MFDA platform; and to Advocis' knowledge, consumers have not been harmed as a result of this practice. Allowing financial advisors to incorporate in the securities sector would prove beneficial to advisors and consumers. Advisor incorporation provides the advantage of reducing administrative red tape for financial advisors. Not allowing financial advisors to direct their commissions to their personal corporations makes little sense, especially in an environment in which most of them are dual-licensed to sell securities and insurance products. It also highlights the regulatory hurdles that exist between the sectors and myriad of regulators and regulation that a single financial advisor must deal with in carrying out his/her daily services to their clients. We again emphasize that under a structure like Ontario's *Financial Advisors Act, 2014* or Advocis' DAA model, the complexities of a financial advisor having so many masters, and no direct say in their oversight, would be removed and consolidated under a new streamlined system that would remove the barriers to regulation that exist under the current outdated regulatory model. It would also result in a better use of regulatory resources – for example, it is so very hard to understand why a change as obvious as advisor incorporation would take over a decade to get just one of the SROs on the securities side to make the necessary amendments, with IIROC only now contemplating the change. Given that financial advisors are increasingly dual-licensed to ensure that they are providing their clients with holistic solutions to their financial needs and risk mitigation, the need for reforms is glaringly obvious to those at the client/advisor level.

⁸ Refer to MFDA Rule 2.4.1

Regulation without Representation

Financial advisors, regardless of the product they sell, should be able to control their own future through direct involvement in the regulation of their own profession; similar to lawyers and doctors. Being regulated by specialized SROs that were created to regulate Brokers and Dealers, but that do not count financial advisors among their members, sets financial advisors apart from the overall structure and decision making process of both IIROC and the MFDA. As a result, financial advisors are being regulated without representation by SROs that were created for the oversight of Brokers and Dealers.

The oversight of the advisor/client relationship and advisor conduct should fall within one regulator, one that recognizes financial advisors as members. For this reason, Advocis proposes that the oversight of financial advisors be removed from the existing insurance and securities regulators and that a DAA model be implemented, or that Ontario's *Financial Advisors Act, 2014* be looked at more closely as the best way forward for regulatory reform.

Under the current regulatory structure financial advisors are regulated by multiple insurance and securities entities. A self-regulatory model would replace all these regulators at the client/advisor level with one oversight body that would have the specialized knowledge and understanding necessary for the proper regulation that would ensure consumer protection and sound policy development. Both the Financial Advisors Act and the Advocis DAA model would accomplish this goal.

Conclusion

We have long supported and championed the concept of directed commissions as it would allow dual-licensed financial advisors to operate in a more streamlined and efficient manner.

Advocis believes that every client-facing financial advisor should be accountable and proficient, and this is best achieved by providing financial advisors with the power to be involved in their own regulation as brokers and dealers currently are under both the MFDA and IIROC. The time has come for the existing SROs and senior regulators to recognize that the time for meaningful reform is now and that the advice industry has outgrown the existing regulatory structure.

Should you have any questions, please do not hesitate to 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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