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FIA & CUIA Review
Policy & Legislation Division
Ministry of Finance
PO Box 9470 Stn Prov Govt
Victoria BC V8W 9V8

VIA EMAIL: fiareview@gov.bc.ca

Dear Sirs/Mesdames:

Re: British Columbia's Review of the *Financial Institutions Act* and *Credit Union Incorporation Act*

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to respond to the British Columbia Ministry of Finance's Initial Public Consultation Paper released in June 2015 (the "Consultation Paper") in regards to its review of the *Financial Institutions Act* ("FIA") and *Credit Union Incorporation Act* ("CUIA", and together with the FIA, the "Acts").

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 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.

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ENHANCING CONSUMER PROTECTION BY RE-THINKING FINANCIAL LEGISLATION

In the 10 years since British Columbia's last review of the Acts, there has been tremendous upheaval in the financial services landscape: this past decade saw the creation of dangerous asset bubbles that collapsed with the Global Financial Crisis. The severe recession that followed resulted in an extended period of market volatility, historically low interest rates, and anemic economic growth. Consumers have experienced rising debt levels, declining savings rates and poor investment returns that have put their retirement plans at risk. In response to the malaise, the industry has shifted its focus from the sale of products to a more holistic view of how the long-term relationship between a consumer and advisor can navigate turbulent economic times.

With this as the background, British Columbia's review of the Acts provides a timely opportunity to fundamentally improve consumer protection in the province. As the Consultation Paper makes clear, "[t]he primary goal or objective of the FIA and CUIA regulatory framework for financial institutions and their intermediaries is… to maintain stability and confidence in the financial services sector by reducing the risk of failures and providing consumer protection."[1] The Consultation Paper also cites with approval the OECD's *G20 High-level Principles on Financial Consumer Protection*,[2] which, commenting on the legal, regulatory and supervisory framework for financial services, includes the principle that "[f]inancial services providers and authorised agents should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches."[3]

Effective consumer protection regulation must be crafted from the perspective of the consumer, and the reality is that advisors serve as their gateway to the financial services industry. So any fundamental review of financial services legislation that purports to prioritize the protection of consumers must recognize that the existing regulatory framework based on product sales is obsolete. The present and future of financial services regulation should acknowledge the central role of the advisor-client relationship; therefore, it is time to professionalize financial advice in Canada. With its review of the Acts now underway, British Columbia has the opportunity to take the lead and be a flag-bearer for the future of consumer protection.

A. Problems with the Existing Regulatory Framework

The existing regulatory framework places British Columbians at risk: while the public should be able to place their confidence in their financial advisor, trusting that he or she meets rigorous standards of professionalism, proficiency and accountability, the reality is that this is not always the case. In fact, the public is exposed due to four major flaws in the existing framework:

(a) Anyone can call themselves a financial advisor and offer planning and advice.

Anyone, regardless of their training, experience or education, can hold themselves out to the public as a financial advisor, financial planner, investment advisor, or countless other titles. Neither the title nor the scope of work is protected, so there is nothing that prevents someone from calling themselves a

[1] Consultation Paper, p. 5.
[2] OECD, *G20 High-level Principles on Financial Consumer Protection*, October 2011, http://www.oecd.org/daf/fin/financial-markets/48892010.pdf.
[3] *Ibid.* at p.5.

financial advisor and offering what they purport to be financial advice to the public, even if they have no training, experience or financial acumen.

This is a serious consumer protection risk that must be addressed; time and time again, consumer surveys have shown that most mistakenly believe that titles such as financial advisor are regulated and someone holding themselves out as such have earned the right to do so through education and experience. Consumers put their faith in the title as a proxy for expertise, but unlike doctors, lawyers or architects, anyone can claim to be an advisor or offer financial advice or planning – which could leave the public vulnerable to incompetence or outright fraud.

(b) Existing regulation is focused on the sales of products, not the ongoing relationship of trust between financial advisors and their clients.

The existing regulatory framework does not reflect the manner in which most British Columbians seek financial advice and planning.

Existing regulation is based on the type of product sold: insurance products, mutual funds or other securities are regulated by entities including the Office of the Superintendent of Financial Institutions ("OSFI"), the Financial Institutions Commission ("FICOM"), the Mutual Fund Dealers Association of Canada ("MFDA") and the Investment Industry Regulatory Organization of Canada ("IIROC"). Each regulator has its own standards and requirements, and while they are strong at regulating their member insurance carriers and mutual fund or securities dealers, including regulating the constant product innovation in the industry, they do not have a collective focus on the retail consumer's overall advisory experience.

Looking at the issue from the consumer's perspective illustrates the problem: many advisors hold multiple licenses which allow them to provide consumers with risk management and wealth solutions from across the insurance, mutual fund and securities worlds. But in practice, most consumers do not think of the financial industry in such strict "silos". Instead, consumers work with their advisor to develop holistic financial plans, and they want their advisor to be professional, knowledgeable and accountable, so that the advisor can provide the complete coverage they need.

Most consumers are not particularly interested in knowing that product *x* comes from the insurance universe and product *y* comes from the mutual fund universe – and as product features converge, it is increasingly difficult to tell them apart. But, in the current regulatory framework based on product sales, it is often the case that the client-advisor relationship is regulated not by a single entity, but by a combination of them – and the protections that consumers receive vary based on the sector of the product's origination. We have seen the importance of this distinction coming to light if problems arise, leaving consumers confused and disappointed.

We believe that consumers should enjoy high degrees of protection throughout their advisory relationship that is not dependent on the nature of the underlying products that fulfill their financial plans. There should be an overarching code of conduct and an industry-wide requirement to maintain responsible levels of errors and omissions insurance, neither of which exists today.

This sectoral approach also highlights why existing regulators cannot effectively regulate the holistic advisory relationship. Certain stakeholders may suggest that regulation of financial advisors should fall under the auspices of existing regulatory bodies, and it is true that in recent years, some have given

greater attention to the advisory relationship (for example, through securities regulators' Client Relationship Model reforms).

Despite this laudable effort, existing regulators are structurally limited by their jurisdiction of authority; for example, even if the Insurance Council of British Columbia ("ICBC") were to completely overhaul its expectations of licensees, those changes would only impact the consumer's relationship in regards to his or her purchases of insurance products – the consumer's experience for mutual funds would be unaffected.

In an ideal world, all regulators would set comparable standards so that the client would be equally protected, regardless of the product's origination. But our century of experience and general common sense tells us that when you have multiple regulators that were created on the basis of regulating products, not advice, which already have standards that (in some cases) vary widely from each other, coordinating policies on financial advice is nearly impossible. And even if regulators did manage to agree to a uniform set of policies, those policies would do nothing to capture those individuals who are not registered at all, such as the fee-only planner who does not sell products.

(c) There is no firm and clear requirement for advisors to keep their knowledge current.

One of Advocis' core membership requirements is that advisors keep their knowledge current by completing continuing education courses each year, including courses on professionalism and ethics. But for the same reasons discussed above, the regulatory requirements for continuing education are completely variable based on the product's sector of origination.

For example, British Columbia requires that life insurance licensees holding an approved designation complete five hours of education every year, whereas some other provinces do not have any requirements at all for their licensees. And while IIROC has continuing education requirements for certain registered representatives, the MFDA only states that continuing education "should be provided" to its approved persons.[4] And those advisors who are not registrants with any regulator have no continuing education requirements whatsoever.

An advisor who does not keep their knowledge current is an advisor that puts their clients at risk; in this industry, competition amongst insurance carriers and distributors, and securities dealers is fierce, so product change and innovation is constant. Therefore, static knowledge quickly becomes obsolete and harms advisors' ability to act in the best interests of their clients.

Advocis believes that all individuals offering financial advice or planning to the retail consumer should be required to complete continuing education on a regular basis, which includes an emphasis on education related to professionalism and ethics.

(d) There is no effective, industry-wide disciplinary process.

The majority of advisory relationships are beneficial to the public, but some inevitably do not work out as planned and, sometimes, this is the fault of the advisor. The industry requires a strong and effective

[4] On June 22, 2015, MFDA launched a consultation to consider whether it should require its approved persons to complete continuing education. See: http://mfda.ca/regulation/bulletins15/Bulletin0644-P.pdf.

disciplinary process to ensure that those advisors who have committed misconduct are appropriately disciplined in the interest of protecting the public and deterring others from similar behaviour.

Individually, the ICBC, MFDA or IIROC are empowered to impose a wide variety of sanctions, including stripping advisors of their license or registration. However, the limitations of the existing product-based regulatory framework are most apparent when it comes to discipline: each regulator's enforcement powers are limited to its respective sector. This means that, for example, if an advisor commits misconduct in the sales of mutual funds that is so egregious that the MFDA determines he is unfit to work in the industry and revokes his registration, there is nothing that prevents that same advisor from continuing to advise on and sell segregated funds through his insurance license.

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" to any British Columbian 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.

Also currently lacking is an easy mechanism for the public to verify their advisor's credentials and disciplinary history. While regulators do maintain websites where the public can search for information on their advisor, the information returned 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. In the example above, 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 mutual funds 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. 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.

These four major shortcomings of the existing regulatory framework expose consumers to unnecessary and unacceptable risk. They arise from the fact that current regulation does not reflect the modern, holistic and cross-sectoral approach to financial advice and planning that most consumers receive.

B. Our Solution: Raising the Professional Bar

Fortunately, Advocis has developed a solution that is simple, straightforward, and does not require significant government resources to implement.

Entitled *Raising the Professional Bar*, our solution elevates the provision of financial advice to a recognized profession. Simply, it requires that anyone who holds himself or herself out to the public as a financial advisor, or who is in the business of offering financial advice or planning services at the retail level, be a member in good standing of a new authority that has, as its focus, the licensing and conduct

regulation of these persons (the “Authority”). We have enclosed a copy of the proposal with this submission; the details are provided therein, but below is a summary of its key features.

The Authority would establish key criteria for its members, including: a code of professional conduct; a requirement that members maintain errors and omissions insurance; initial proficiency and continuing education requirements to maintain licensing; and a complaints and disciplinary process that empowers the Authority to suspend or cancel the advisor's membership.

The Authority would also maintain a public-facing database whereby consumers could conduct a "one-stop" check of a prospective advisor's credentials and disciplinary history. Unlike the registries maintained by existing regulators, which only contain information pertaining to the advisor's sales activities in the regulator’s respective sector, the Authority’s registry would be based on the conduct of offering advisory services to the retail public. It would therefore transcend product sectors. This focus on scope and nature of work would also capture those advisors and planners who are currently not registered with any regulator and would therefore not appear on any registry.

We first proposed our solution in February 2013, and we have continually refined it based on feedback from stakeholders including politicians and regulators, consumer groups, product manufacturers and distributors, and practicing financial advisors. Based on this feedback, we have determined that the best structure for the Authority is as a delegated administrative authority (“DAA”) which has been delegated its jurisdiction in statute by the Minister of Finance.

DAAs reduce the government’s footprint: its employees are not public servants and they are self-financing, largely through fees paid by its members. This model has gained acceptance in several provinces: notable examples include Ontario’s Travel Industry Council, Alberta’s Boilers Safety Association, and the British Columbia Safety Authority.

The Authority would be established as a not-for-profit entity dedicated to financial advisor professionalism in the public interest. The silos which currently exist between the insurance and securities sectors at the product level would remain intact, in order to preserve existing product-focused regulatory expertise, but the silo approach would be removed at the level of the holistic advisor-client relationship.

It is essential that the DAA be entirely independent from financial institutions, as well as from product manufacturers and distributors. The province would retain ultimate accountability and control of the Authority, with the Authority maintaining key obligations to the government, such as through annual reports and audited financial statements, and being subject to operational reviews.

The solution provides benefits to all market participants: first and foremost, consumers would benefit from knowing that all advisors meet proficiency requirements, just as they do with their architects or engineers. They would also benefit from having a simple way to verify their advisor's credentials and disciplinary history, without having to navigate the maze that is the current regulatory landscape. Finally, they would enjoy the support of a disciplinary system with teeth: it would be a system that actually protects the public, rather than potentially off-loading one sector's problem onto another sector and a new set of unsuspecting consumers. The simplicity of having the regulatory accountability for financial advisors enshrined in one body, the Authority, empowers consumers should the need to register a complaint arise.

Financial advisors would benefit from enhanced public trust, status and confidence as true professionals, and we know that our members would be very supportive of unethical colleagues who tarnish their collective reputation being removed from the industry once and for all. The government would benefit from enhanced consumer outcomes, including reduced public financial reliance through a DAA model that is self-financing by industry. Product providers and distributors would benefit from the professionalism of the advisors who represent their companies to the public on a day-to-day basis.

This is only an introduction to our solution; there are many more details in the enclosed document and we strongly encourage the Ministry to review it as part of its current consultation. We believe that the proposal strikes a careful balance between leveraging the strengths of the existing regulatory framework and adding those elements that would truly allow for increased professionalism and consumer protection in the industry.

RESPONSES TO SPECIFIC QUESTIONS IN CONSULTATION PAPER

A. Overall/Framework Issues

- ***Financial Consumer Protection***

Should BC consider adopting a market conduct code for fair treatment of consumers that would apply to financial institutions? If so, should there be one code for all financial institutions or separate codes for different types of financial institution?

Yes, BC should consider adopting a code, and it should apply to all financial institutions. The purpose of such a code is to protect consumers, and at the retail level, it should not matter what type of financial institution the consumer is dealing with. Whether the consumer is engaging the services of a bank, credit union, trust company, insurance company or so on, there are certain pillars of behaviour that are relevant across the financial services industry.

The principles of the code should be expressed at a high level to ensure their universal applicability. For example, the principles could include prohibitions on deceptive or unfair practices, a commitment to proficiency through continual education, and a duty to respect both the letter and the spirit of the law. BC may wish to review Advocis' *Code of Professional Conduct*,[5] which all of our members agree to abide with as a condition of membership, as a potential template for its code for financial institutions.

Should BC credit unions be required to have an internal complaint handling process and to offer member access to an independent ombudservice?

Yes, BC credit unions should be required to have both an internal complaint handling process and to offer member access to an independent ombudservice. While credit unions may have, in the past, been smaller organizations that have attracted few complaints, the Consultation Paper notes that they have expanded their membership while increasing the sophistication of products offered. Consequently, from the consumer's perspective, credit unions should offer the same protections and operate on a level playing field with other financial institutions.

[5] Available at http://www.advocis.ca/forPublic/codeConduct-pub.html.

Credit unions in other provinces have successfully implemented complaint handling procedures and ombudservice policies. As noted in the Consultation Paper, Saskatchewan's credit unions have developed a standardized process that provides a timely response to member complaints and escalates unresolved complaints, either to the Office of the Ombudsman established by the credit union system or to the federal Ombudsman for Banking Services and Investments.

Should ombudservices be mandated for addressing consumer complaints against mutual insurers and/or insurance agents and brokers?

Complaints against mutual insurers should continue to be referred to the Mutual Insurance Companies OmbudService, so long as mutual insurers are able to demonstrate to FICOM the legitimacy, neutrality and efficacy of their voluntary ombudservice.

Complaints against life insurance agents or brokers should be addressed to the ICBC, with the ICBC continuing to refer certain matters (such as unlicensed activity, rebating and tied selling) to FICOM where the latter has primary responsibility.

Should authorization requirements for financial institutions and licensing requirements for insurance agents and brokers specifically require fair treatment of consumers?

Yes, authorization and licensing requirements should specifically require the fair treatment of consumers. However, this requirement is only lip service without enforceability: it is difficult to say that BC is serious about the fair treatment of consumers when anyone can hold themselves out as a financial advisor, the key liaison between the consumer and the financial services industry.

To give the requirement substance, it must be backed up by consequences: an agent that does not attain the required proficiency to offer advice, maintain his knowledge through continuous education, or abide by a code of professional conduct is not treating the consumer fairly. An agent that commits misconduct in one sector and simply absconds to another sector, out of the reach of product-based regulation, is not treating the consumer fairly.

We believe that such an agent should be banned outright from offering financial advisory services. Our *Raising the Professional Bar* proposal, discussed above,[6] transforms the fair treatment of consumers from merely an aspirational concept to an actionable plan.

Should branch closure notification rules be considered in BC, perhaps as part of a market conduct code? If so, what rules would be appropriate in BC?

Yes, branch closure notification rules should apply. If the role of a credit union is to serve local communities – especially those communities under-serviced by traditional banks – then the role of the credit union is as important as, and arguably more important than, a traditional bank branch. Therefore, we recommend that federal "consult and notify" procedures should be mirrored. This also promotes consistency and a level playing field, from the perspective of consumers.

[6] *Supra*, beginning at page 6.

Does BC have the correct framework for use of corporate and business names and logos, and the disclosure of identity for financial institutions?

We are generally supportive of the framework, as it makes it easy for consumers to understand the nature of the entity they are dealing with. The Consultation Paper states that "it is essential that the identity of financial institutions be clear to consumers" – we agree completely.

- ***Market Discipline / Public Disclosure of Key Financial Risk Information***

Should BC financial institutions be required to make additional financial and risk information available publicly, including online? If so, which types of information? What are the benefits and risks or issues associated with more stringent public disclosure requirements?

Financial and risk information should be required to be available online; this is the channel that consumers are increasingly using when seeking information, especially as information becomes an "on demand" commodity.

But the discussion should not focus on whether BC should require any particular report to be available publicly; the discussion should ask whether consumers can *understand* and *analyze* the information they need to make the decisions that are best for them. As discussed later in the Consultation Paper, the level of financial literacy amongst consumers is worrisomely low. Simply requiring copious amounts of disclosure could overwhelm consumers while being burdensome to financial institutions.

Instead, BC should promote a framework that makes key financial and risk information available in a clear and concise manner, making it more accessible for consumers of varying financial literacy. Ultimately, though, many financial products are inherently complex, making it challenging to distill key information down to a simple a document that is easily comprehensible. That is why BC must also promote a significant role for financial advice, as advisors are the key professionals that work with consumers, helping them understand complex financial concepts and working hand-in-hand to develop solutions that are tailored to the consumer's individual needs.

Should FICOM be permitted to publish information it collects from financial institutions online? Are there certain types of information that should not be published or exemptions that should be provided (e.g., to particular types or sizes of institution)?

Generally, yes, FICOM should be permitted to publish its collected information online. There should be a general bias towards disclosure over non-disclosure, regardless of size of institution. As this is a broad question, however, it is reasonable that exemptions would apply, such as in regards to information that is identifiable or associable to a particular individual.

Should financial institutions in BC be required to provide information to national databases for regulatory purposes, and should FICOM be allowed to do so?

At a high level, we support regulatory cooperation amongst jurisdictions that makes financial regulation more effective and efficient. But with the authority to cooperate, regulators must also make a steadfast commitment to avoid burdensome duplication: regulators must make every effort to first obtain the information they are seeking from the shared datasets before asking financial institutions to compile

and report information. Such a commitment provides the benefits of regulatory cooperation to all market participants.

BC should also seek to join the joint complaint reporting system established by Quebec and Ontario and subsequently expanded nationwide. BC stands as the only province that has not joined the system, putting British Columbians at a disadvantage relative to consumers in other provinces in regards to consumer protection.

- ***Financial Literacy***

What role should financial institutions and intermediaries play in contributing to and fostering financial literacy? Are there any legislative impediments to their doing so? Do financial institutions need additional tools to help fight financial abuse?

Financial institutions and intermediaries have an extremely important role to play in contributing to and fostering financial literacy – they have a direct stake in having consumers that are engaged in the subject matter and interested in the products and services they offer. And of all the intermediaries, financial advisors have the most pivotal role, being the only individuals that work directly with the consumer. They represent the public face of the entire financial services industry.

To boost the financial literacy of consumers, it is critical that the advisors that consumers rely on for financial information and analysis are themselves duly qualified, proficient, and maintain the currency of their knowledge. This is why it is so incredibly important that financial advisors are true professionals – while regulators' historic focus on the prudential and conduct regulation of financial institutions has allowed Canada to boast some of the strongest and most stable institutions in the world, all that effort is for naught if the people actually delivering the financial service to the end consumer do not achieve basic levels of proficiency or receive effective oversight. After all, a framework for consumer protection is only as strong as its weakest link.

In regards to legislative impediments, as discussed previously, the existing regulatory framework allows anyone to call themselves a financial advisor and offer what they purport to be financial advice, including those that have no financial acumen whatsoever. This includes negligent actors that act without the intent of doing harm, but also malevolent actors who engage in fraud. This untenable situation paves the way for financial abuse and must be addressed through legislative reform as envisioned in our *Raising the Professional Bar* proposal.

What role should the provincial government have with respect to promoting financial literacy? Is there a need to duplicate or complement efforts being undertaken at the federal level, particularly for provincially regulated institutions?

The provincial government can take a tremendous step forward in improving financial literacy and consumer protection by implementing our *Raising the Professional Bar* proposal and professionalizing financial advice. Since, under Canada's constitution, professions are under provincial jurisdiction, it is the provincial governments that must take the lead – and BC can be that leader.

Should legislative changes to bolster financial literacy and/or protect consumers from financial abuse be considered?

Yes, legislative changes should be enacted to implement the *Raising the Professional Bar* proposal, improving both financial literacy and protecting consumers from financial abuse.

The federal government has tabled legislation to permit federally regulated entities to report concerns about financial abuse to next of kin in specific circumstances. Should similar and/or other changes be considered with respect to BC financial institutions?

Yes, BC should consider legislative amendments that would allow for the contacting of next of kin or authorized representatives without the knowledge and consent of the affected individual. The powers granted by the *Adult Guardianship Act* should reflect the demographic shift underway that sees seniors representing the fastest growing proportion of the population. With this shift comes unique and sensitive issues regarding elder abuse, capacity and consent.

The complexity, and growing prevalence, of senior-related issues is another reason why financial advice should be professionalized. In the coming years, advisors will increasingly find themselves in the middle of difficult situations involving suspected elder abuse, so BC must ensure that advisors are proficient in detecting these issues and trained in responding to them sensitively and professionally.

Do governments, including the BC provincial government, need to better communicate government policies in areas such as earthquake disaster relief? Are there other measures government should be taking with respect to earthquake or catastrophic loss insurance?

Yes – where the provincial government feels that there is a deficiency, or that its citizens are ill-prepared and underinsured, it should take a proactive role to communicate its policies and dispel misconceptions. Ultimately, such informational failures are a form of financial illiteracy and government should leverage the ability of professional financial advisors to deliver key messages to consumers in a face-to-face format where that information is most likely to be understood.

- ***Technological Change***

Are any changes needed to ensure consumers continue to be protected and provided with the information they need to make informed choices?

Consumers are increasingly integrating technology into all aspects of their lives, including the manner in which they access financial services. We are seeing increasing interest in tech-enabled options, such as online insurance offerings and automated advisory services, commonly known as robo-advisors. But, in our opinion, what consumers gain in convenience can quickly be offset by the risks of not seeking professional financial advice.

This is because financial products are becoming increasingly complex – in recent years, we have seen the development of products such as credit default swaps, market-linked investments with principal guarantees, and inverse and leveraged offerings, as fierce competition between manufacturers has spurred continuous innovation in the sector. But this increase in complexity moves inversely with simplicity and transparency, making it harder for the average consumer to understand the objects and risks associated with these products – and this is especially so when the average consumer lacks even basic financial literacy.

This trend in product innovation makes know-your-product, know-your-client and suitability more important for consumer protection than ever before. That is, the importance of the professional advisor's judgment and experience in assessing whether and how these products address the financial needs of consumers is enhanced, not diminished. But too often, technological "progress" in the financial services sector is equated with consumers dealing directly with manufacturers, side-stepping the advisor and foregoing professional advice.

The BC government should be mindful that such a trend would be short-sighted and not in the long term interests of the consumer's financial health – after all, studies have consistently proven that consumers derive substantial benefits from seeking professional advice.[7,8] Further, there are many scenarios where a consumer does not seek advice and something does go wrong – such as, for example, a consumer misunderstanding the exclusions of an insurance policy and therefore not having the coverage anticipated; this is an outcome that significantly erodes consumer protection, and it is harmed further in that in such a scenario, that consumer would not be able to look to the advisor for recourse.

Therefore, BC should support a fulsome role for advice as a critical companion to technological change. For example, BC could require that before an online transaction (such as the purchase of an insurance policy) is completed and consumers are issued a policy, the application must be reviewed by a licensed advisor who has the ability to follow up with the consumer to ask further questions or otherwise determine the veracity of the statements in the application. There are many ways that advice can co-exist with technological change and we would be pleased to discuss this item further with BC.

Are there certain financial products or services that should not be available for purchase directly by consumers online without using a professional broker or financial advisor at a regulated institution?

We believe that this question should approach the issue from the other way around: what products would be suitable for purchase directly by consumers online without using a professional advisor? We believe that technological change is ultimately about enhancing the user experience, and sometimes that means being able to purchase goods and services – including financial products – instantly, without investing significant time or effort.

However, for the reasons explained above (including product complexity and consumer financial literacy), we believe that relatively few financial products should qualify for being purchased in this manner. Therefore, we recommend that direct sales should be limited to relatively simple products, such as guaranteed investment certificates, where most purchasers will understand the benefits and limitations inherent in the product even if they do not conduct any further research or analysis.

[7] In their 2012 study entitled *Econometric Models on the Value of Advice of a Financial Advisor* by the Center for Interuniversity Research and Analysis of Organizations, Professors Claude Montmarquette and Nathalie Viennot-Briot conclude that based on data compiled from over 10,000 households, advised households have up to almost three times the median assets of non-advised households. (See: http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf)

[8] The 2014 PricewaterhouseCoopers study *Sound Advice: Insights into Canada's Financial Advice Industry* shows that advised households save up to 4.2 times more than non-advised households. (See: http://www.advocis.ca/sareport.pdf)

- ***Out of Province Business***

Are changes or clarifications needed to BC's legislative framework for regulating extra-provincial credit unions, either for BC credit unions operating extra-provincially or for credit unions from other jurisdictions operating in BC?

What businesses require in order to thrive are rules that are predicable, stable and fair. To that extent, BC's "home and host principal regulator" rules for credit unions are working well. We agree that this approach reduces the regulatory burden and does not create unacceptable risk.

Are changes needed to BC's approach to insurance regulation? Should certain exemptions be available in respect of individuals and entities (including societies and self-insurers) seeking to purchase insurance outside BC? On what basis should exemptions be provided?

Exemptions should not be readily offered as doing so creates significant regulatory risk and potential harm to BC's consumers. We recognize that BC has resisted the granting of exemptions, having allowed only a specific exemption in 2008 to BC church groups. We understand that the province is under pressure to grant further exemptions to other organizations, but we urge BC to remain steadfast in this regard.

Ultimately, we believe that exemptions should only be considered where the insurance coverage is genuinely unique such that it is not available from a BC or Canadian provider. Such applications should be individually considered by FICOM, with exemption approvals being exceedingly rare. As noted, BC already provides a framework for licensed agents to place risk with unauthorized insurers where insurance is not otherwise available, and BC also has a flexible regulatory framework for self-insurance.

Are changes to the current legislative framework needed to address the use of technology by out of province entities providing financial products and services to British Columbians? Do the current definitions of what constitutes "carrying on business in BC" need to be revisited in light of increased e-commerce/online distribution of financial products?

The issue must be considered from the consumer's perspective: when transacting online, BC consumers may not realize that a particular entity is based from outside the province and may erroneously assume that if an entity can offer products and services within the province, it must be regulated by the province. Taking this line of reasoning further, the consumer may also assume that the entity can be held to account in accordance with the province's laws, in the case that something goes wrong.

Ultimately, determining whether a particular entity engages in "carrying on business in BC" should be premised on the location of the consumer and insured interest: we support BC's approach that property and persons situated in BC remain subject to provincial regulatory oversight, regardless of where the business activity is located.

In light of the growing prevalence of e-commerce and online distribution, there is a role for governments and regulators to play in ensuring that consumers understand that entities in this channel are not necessarily local – that is, consumers should be literate about both the product or service, and the provider behind it. This is another area where professional financial advisors can play a key role in educating the public.

- ***Regulatory Powers and Guidelines***

Does FICOM have adequate tools to address current and emerging risks (at an individual and system-wide level) in a timely and effective manner?

Yes, through its combination of issuable guidelines, information bulletins and ICBC rules, FICOM does have the tools to allow it to respond quickly and effectively.

Should FICOM have the ability (i.e., with authority provided in legislation) to issue enforceable prudential and market conduct requirements and standards/rules? If so, what limits on that power and accountability mechanisms are needed (e.g., oversight/approval role for government, appeal process, etc.)?

Yes, FICOM should have the ability to issue enforceable rules, with the authority to do so stipulated in legislation. This ability should be subject to conditions, including, *inter alia*:

- FICOM publishes for public consultation the rule, explanatory notes connecting the rule to the underlying issues of concern and a cost-benefit analysis of the rule's impact;
- the public consultation period stays open for a minimum of 60 days;
- stakeholder feedback is given serious and thoughtful consideration;
- if, as a result of the feedback, the rule is changed materially, the rule is reissued for a new consultation;
- once it is finalized, FICOM must obtain approval for the rule from the Minister of Finance; and
- FICOM provides reasonable notice before bringing the rule into effect so as to give stakeholders time to adapt.

To respond to emerging risks in a timely manner, does FICOM need powers to revise conduct and solvency expectations outside of legislation or regulation? If so, what limits and accountability mechanisms are needed?

Outside of legislation or regulation, if FICOM requires powers to respond to an immediate risk, such powers should automatically expire via a sunset mechanism within a reasonable timeframe. This would allow FICOM to respond rapidly when necessary and would also force it to maintain discipline in exercising those powers lest it be unable to justify their continuance upon expiration.

B. <u>Credit Union Sector</u>

- ***Deposit Insurance***

What is the optimal and appropriate level and system of deposit insurance? - *and* - Should a limit on deposit insurance protection be reintroduced, and if so, what limit? Should any limits be reviewed on a regular basis (e.g., every five or ten years)?

We will answer these interrelated questions together. We support the Basel Committee on Banking Supervision and International Association of Deposit Insurers' core principle that deposit insurance

should adequately cover a large majority of depositors and that the level of coverage should be limited but credible. We also support their recommendation that jurisdictions with unlimited deposit insurance transition to limited coverage as soon as their circumstances permit.[9]

BC introduced unlimited deposit insurance to the credit union sector to assuage consumer fears arising from the financial crisis and to make the jurisdiction an attractive place for depositors in the face of the significant capital flight at the time. Since then, the fear of institutional failure has receded. So maintaining the unlimited coverage carries unjustifiable risk to the province, as noted in a recent report by the International Monetary Fund.[10]

Any government deposit guarantee creates a moral hazard in regards to how a financial institution utilizes depositors' funds, and the hazard is further exaggerated in the case of unlimited guarantees where the ultimate responsibility for all deposits is taken outside the credit union and put onto the province (and ultimately, its taxpayers). Unlimited guarantees incentivize the credit union to pursue riskier, but potentially more profitable, lending decisions.[11, 12]

We understand the need for BC's credit unions to compete with other deposit-taking institutions, and deposit guarantees are an attractive feature for consumers. Therefore, we recommend that BC reintroduce a guarantee limit of $100,000 per account; this would match the limit offered by the Canada Deposit Insurance Corporation, putting BC credit unions on equal footing with banks in the province. The guarantee limit could be reviewed periodically, as part of the mandatory 10-year review of the Acts.

If a limit was reintroduced, should certain exceptions be made (e.g., unlimited protection for registered retirement savings products), similar to what has been done in other jurisdictions?

Exceptions can be made for separate coverage or protection for joint deposits and retirement savings accounts (in interest-bearing accounts, but not in accounts whose value fluctuate based on market performance), to be consistent with what is offered in other jurisdictions. The policy objectives should be to foster conditions that allow most consumers to have a reasonable understanding of their rights and protections and to level the playing field amongst market participants, including other deposit-taking institutions. But for the same reasons discussed above, unlimited guarantees are unreasonable and should not be available.

Are other reforms to BC deposit insurance coverage needed? Is the scope of coverage appropriate (i.e., should certain products or types of deposit be excluded or included)?

Term deposits up to five years in length should be protected, to align BC with the policies of other provinces and federal banking institutions. Foreign currency deposits should not be included in the coverage, as these are subject to foreign currency risk, which is a market risk that is outside the

[9] Basel Committee on Banking Supervision and International Association of Deposit Insurers, *Core Principles for Effective Deposit Insurance Systems*, June 2009, http://www.bis.org/publ/bcbs156.pdf.
[10] International Monetary Fund, *IMF Country Report No. 14/67 – Canada*, March 2014, http://www.imf.org/external/pubs/ft/scr/2014/cr1467.pdf.
[11] Media have reported on credit unions being involved in aggressive lending practices that are not subject to the rigorous checks and balances in the banking sector. For example: http://business.financialpost.com/personal-finance/mortgages-real-estate/credit-unions-take-on-banks-in-mortgage-wars-with-rates-as-low-as-2-69.
[12] Recently, a major BC credit union began offering what are effectively payday loans, which are amongst the riskiest lending activities, attracting the highest interest rates. See: https://www.vancity.com/Loans/TypesOfLoans/FairAndFastLoan/.

founding purposes of deposit insurance which centre on institutional failure. Coverage should operate on gross payout basis, which allows for clearer and faster settlement in the event of a failure and is consistent with international and intra-Canadian standards.

C. Insurance Sector

- ***Insurance Retailing and Licensing Exemptions***

Are the current exemptions appropriate? Should any additional exemptions be provided?

We believe that licensing exemptions are not appropriate and are harmful to consumer protection. Many insurance products are complex and should only be sold via an intermediary who is knowledgeable about the product's features and limitations. While it is arguable that insurance products sold incidentally to a related transaction are *generally* less complex, a commitment to consumer protection demands that those incidental salespersons still obtain some type of licensing to assure their proficiency.

The Consultation Paper states that in allowing for exempted sales, BC has relied on an assumption that "the exempted seller will act in a good faith manner with regard to the insurance because he wishes to maintain the business relationship with the consumer". But even if the seller acts in good faith, with no ill intent, that does nothing to speak to the proficiency, knowledge or skills of the untrained salespeople in the seller's employ who are transacting in insurance products with consumers. Further, as noted, incidental sales can be associated with one time transactions, limiting the efficacy of the "good faith" argument and putting consumers further at risk.

Therefore, at a minimum, BC should abolish outright licensing exemptions and require that incidental insurance sellers obtain a restricted license, similar to what is required by its provincial colleagues in Alberta, Saskatchewan and Manitoba, and what BC itself requires for travel insurance. This entity-level license ensures a basic corporate commitment to training its salespeople on the insurance aspect and to the development of compliance procedures.

Restricted licensing results in a two-tier system where the corporate entity that holds the restricted license can be subject to regulatory discipline, but not the individuals who actually sell the incidental insurance products. To partially alleviate this concern, sales representatives of the restricted licensee should be supervised on-site by a fully-licensed individual; that individual could provide guidance and advice to the salesforce and be accountable to the regulator in the event of a consumer complaint, promoting consumer protection and institutional accountability.

Ultimately, though, the best way to protect consumers is to require the individual licensing of incidental insurance salespersons. Through an individual license, salespersons can personally be subject to proficiency and continuing education requirements, and to regulatory discipline, which encourages compliance with rules and industry best practices. Individual licensing promotes the professionalism of intermediaries and sheds greater light on the insurance aspect of the transaction.

Too often, the incidental insurance aspect is viewed as an afterthought, a throw-in to the main transaction, and a hedge against an unlikely occurrence – but if the consumer needs to call upon that credit, travel, or other insurance, its critical importance quickly comes into sharp focus at a time when

the consumer is vulnerable. Given its potential importance, consumers should have a strong understanding of exactly what the incidental insurance covers, which is best accomplished when the consumer can rely on the advice of a professional licensee.

Should insurers have more responsibility for exempt sellers? Should they be required to provide more direct oversight?

Yes, insurers should bear more responsibility if they are having unlicensed salespeople serve as agents for their products. Consumer protection could be compromised when salespeople are inadequately trained on product characteristics and the process of understanding consumer needs, so insurers using this channel should take greater steps to promote a training, compliance and accountability culture. Direct oversight by fully-licensed professionals would be a positive step forward.

Should the FIA be amended to give the Insurance Council increased powers to license and regulate incidental sellers of insurance?

Yes, the FIA should be amended to provide ICBC with those powers. Insurance products, by their nature, are relied upon by consumers at a time of need, so it really does not matter whether the initial sale of the insurance policy was a primary transaction in its own right or incidental to another transaction. The principles behind the ICBC's agent licensing and conduct regulation equally apply to incidental sellers.

Should certain insurance products only be sold by licensed agents? If so, which ones?

All incidental insurance products that are related to the life and health of the insured should require the involvement of a fully-licensed agent, such as travel medical insurance or creditor life insurance. Life, health, accident and sickness matters quickly become very complex, having many exclusions and requiring significant consumer disclosure on applications.

Should the restricted insurance agent model used by some other provinces, and applicable to travel agencies in BC, be looked at with respect to the sale of other types of incidental insurance such as credit insurance and/or product and vehicle warranties? If so, which types?

As discussed above, BC should require restricted entity-level licensing as a bare minimum, which at least creates a corporate commitment to training its salesforce and the establishment of compliance policies. Outright licensing exemptions should be eliminated.

Is the current restricted licensing regime for travel agencies effective and appropriate? Should travel agents, who are already regulated by Consumer Protection BC, be provided with an exemption under the FIA?

The restricted licensing regime is better than allowing an outright exemption, but to truly enhance consumer protection, licensing should be required at the individual level. This is particularly so as travel insurance can involve life, accident and other medical coverage. We recognize that travel agents are already regulated under the *Business Practices and Consumer Protection Act*, but given the type of incidental insurance they offer, it may be more appropriate to have them regulated under the FIA.

- ***Regulation of Insurance Intermediaries***

Should some or all members of the Insurance Council of BC be elected?

We believe that it is more important for a variety of constituencies to be adequately represented. We recommend that BC structure the ICBC in a manner similar to councils in other provinces by allowing for members to be elected by industry or appointed by major industry associations.

Does the Insurance Council have the right regulatory tools and structure for its role? Are any improvements needed to enhance coordination between the supervisory and intermediary regulatory authorities?

The ICBC has done a commendable job regarding agent licensing and conduct matters. However, it is structurally limited to what it can do, as it was established on a product-sector basis, which leaves consumers exposed. It is time to fundamentally rethink the regulation of financial services and professionalize the advice industry, as envisioned in our *Raising the Professional Bar* proposal.

Is the current oversight framework, including appeals to the Financial Services Tribunal, effective? If Insurance Council members are elected, are changes needed to other aspects of the accountability framework?

There are many salutary benefits of the oversight framework and concerns about regulatory capture can be addressed by having the appropriate accountability mechanisms in place. We believe that the current oversight framework is effective in ensuring accountability by including, in part, the right to a hearing and the requirement to issue reasons in writing. It is critical to the functioning of the system that the Financial Services Tribunal remains an independent entity.

- ***Protection of Confidential Information***

Does BC's financial institutions legislation achieve the right balance between open government and appropriate protection of confidential information relating to financial institutions? If not, what changes are appropriate?

In our view, BC's legislation does not achieve the right balance. BC should move towards the position of other provinces and the federal government, which limits disclosure when information is given in confidence. Freedom of information is about making government accountable to the public by making its operations more transparent; it is not about allowing the public to indirectly obtain confidential information about the private businesses that government regulates.

Moving in this direction could improve regulatory cooperation, and therefore, regulatory effectiveness, which enhances consumer protection. As noted in the Consultation Paper, OSFI has demonstrated reluctance to share information with FICOM out of concern that information that is protected federally may be disclosed in BC. We agree that regulatory cooperation is important for effective oversight where the entities operate in multiple jurisdictions or where there is overlapping authority, so we urge BC to consider reforming its position on the protection of confidential information.

Would insurer self-assessment privilege provide a net public benefit by enhancing internal compliance systems and confidential disclosure to the regulator? Do the benefits outweigh the costs of limiting evidence available in court proceedings?

Privilege should apply to insurer self-assessments. This will encourage insurers to be more thorough and honest with themselves and the regulator, which furthers the primary purpose of conducting self-assessments: to identify and correct potential regulatory issues at an early stage before they become serious, rather than being used as leverage for litigation. Doing so would also align BC with the 2008 Canadian Council of Insurance Regulators' recommendations on privilege and insurer self-assessments,[13] as well as with the legislated positions of Alberta and Manitoba.

Should the issue of privilege be addressed in the context of insurers alone, financial institutions generally or through a more comprehensive review related to all industries?

The issue of privilege should be addressed in the context of financial institutions generally, to ensure equal treatment of like participants in the industry. We are unable to comment on the specific privilege or confidentiality issues that may be important to particular industries.

- ***Long-term Disability Plans***

Does BC have the right approach to long term disability benefits?
- and -
Should employers and other plan sponsors be required to insure LTD benefit plans? Would this deter employers from providing these benefits?

In the interests of consumer protection, BC should change its approach to long-term disability ("LTD") plans. As noted in the Consultation Paper, there is considerable confusion amongst consumers and employees as to whether an LTD plan is employer-backed or backed by an insurance company, and employees do not necessarily understand the implications of one option over the other. (It would be helpful to employees if employers would consider involving professional advisors to support their employees, explain the program offered and avoid confusion at the outset.)

To remedy this situation, BC should emulate what is done by the federal and Ontario governments, both of which require LTD plans to be insured by a third-party insurer. The nature of LTD benefits is such that they provide critical financial support at times when consumers are unable to work; a disruption in LTD benefits is potentially life-altering. Therefore, they should be insulated from the potential of the employer going bankrupt. While this may increase the costs of offering LTD plans, in a competitive market for labour, we believe that most employers would continue to offer these plans.

Are there consumer protection issues related to ASO plans? How can consumer awareness be increased?

[13] Canadian Council of Insurance Regulators, *Final Report on Privilege Model and Whistle Blower Protection*, July 2008, http://www.ccir-ccrra.org/en/init/Privilege/Final_Report_on_Privilege_Model_July08.pdf.

Yes, there are consumer protection issues related to ASO plans. The problem, as noted, is the potential confusion of employees thinking that ASO plans are actually backed by reputable insurance companies, when the reality is that they are merely involved for the provision of administrative services. This issue can be resolved by requiring insurer-backed LTD plans.

- ***Rebating***

Is the current FIA rebating framework effective and appropriate?

We believe that rebating (and the offering of inducements, generally) creates a risk of distorting the relationship between insurers and agents, on the one hand, and consumers on the other. It creates the possibility of tempting the consumer to purchase products for reasons other than the inherent value of the product to the consumer. For this reason, we believe that the blanket prohibition on sales inducements should be reintroduced.

We have no objection to an inducement offered to consumers for obtaining a quote, as opposed to being offered for purchasing a product. We also have no objection to "gifts" to existing clients that are not given in the context of a product purchase. Further, we would like to clarify that negotiations between licensed agents and insurers with respect to the amount of premium should not be considered rebating and therefore should not be prohibited, provided the client is not involved whatsoever in the discussion.

Is the threshold of 25 percent of the premium appropriate? Would a different level be more appropriate, and if so, what level?

We believe that rebating should be prohibited, so the threshold would be 0%. This would apply to all types of insurance, whether life, property and casualty, or accident and sickness insurance.

Are the current disclosure rules on referral payments adequate to protect consumers? Should agents also be required to disclose the amount of any referral payment?

The current disclosure rules are adequate. It is important that consumers understand that there may be a referral fee paid, thereby potentially influencing recommendations. Consumers should be made aware of the incentives in clear, plain language terms, allowing consumers to make their own choices with respect to the recommendation. However, the quantum of the referral payment need not be disclosed.

The issues discussed in this section of the Consultation Paper, including rebating, inducements and referral payments, can potentially influence consumer outcomes in a negative manner. They magnify the need for advisors to be duly qualified and to adhere to an enforceable code of conduct which stipulates (amongst other things) the primacy of the client's interests, all of which is backed up by an effective disciplinary process. This professionalization of the advisory industry is envisioned in our *Raising the Professional Bar* proposal.

D. Trust Sector

- ***Regulation of Trust Business***

Should financial institutions legislation be expanded to regulate or generally prohibit (subject to exemptions) trust business carried on by individuals or associations? *- and -* If the legislation is expanded to regulate trust business carried on by individuals or associations, what exemptions should be provided (e.g., for lawyers, real estate agents, bankruptcy trustees or individuals providing services to corporate entities)? Should a distinction be made between trust activities for personal and business related purposes?

Yes, financial institutions legislation should be expanded to cover trust services carried on by individuals or associations. It should capture those offering trust services on a commercial basis, in part or as a whole of their business. The Acts should prohibit the commercial offering of trust services without a license, subject to exemptions for individuals that are regulated by other recognized BC regulatory frameworks (such as for lawyers, real estate agents, and so on).

As noted in the Consultation Paper, electronic commerce allows individuals or associations to present a very polished "face" to consumers, even if they actually have very little experience or knowledge with the subject matter; this could lead consumers to mistakenly believing that they are dealing with an established (and regulated) intermediary. This confusion is likely to grow as the number of trust services aimed at an aging population proliferates and e-commerce becomes easier and cheaper, making the necessity for the licensing of trust businesses increasingly important.

Individuals or associations who do not offer trust services as a commercial business to the general public should be exempt from licensing. That is, the exemption should apply for trust activities done for personal purposes, with the recognition that most personal trust activities nonetheless involve remuneration for the trustee.

Given that practically all deposit-taking trust companies are now federally regulated, should BC still be requiring trust companies to obtain a business authorization? Does this remain a core element of financial institutions regulation?

Given that OSFI has emerged as the primary regulator of virtually all deposit-taking trust companies, and BC has ceased authorizing provincial deposit-taking trust companies since 2004, this no longer remains a core element of the province's financial institutions regulation.

Should government consider adopting minimum standards, a code of conduct or another mechanism to regulate interest generated from trust funds, where the interest from the fund benefits third parties or the public?

Government should consider adopting a code of conduct that stipulates, in general terms, the use of interest that is generated from trust funds. We would recommend that the code stipulate that earned interest be used for charitable purposes or for the public benefit.

CONCLUSIONS AND NEXT STEPS

The Consultation Paper highlights just how much things have changed since BC conducted its last review of the Acts: technological change moves forward at a breakneck pace, privacy and confidentiality concerns have risen in importance in a connected world, and the traditional "pillars" of financial services have become more intertwined, as product innovation and convergence mean that the lines between the banking, insurance, investment and trust sectors have blurred.

Alarmingly, financial literacy amongst consumers has not improved; so as product sophistication has increased, the net effect is that consumers are more vulnerable than ever. Financial institutions have consolidated and grown larger, with many credit unions outgrowing their "local community" roots to become major players in the market. And the shelf of products available on the market is more expansive and complex than ever.

We believe that regulators must approach the issues of the day foremost from the consumer's perspective, and that is what we have attempted to do with our responses herein. We have a steadfast focus on ensuring that the state of regulation reflects what most consumers would intuitively expect the situation to be, and promoting a level playing field amongst like competitors, regardless of which traditional financial services "pillar" they originate from.

But we believe that the single most important thing that regulators can do to enhance consumer protection is to professionalize financial advice. We cannot stress enough how critical the role of the advisor is to the consumer's experience with the entire financial services sector, so it is untenable that meaningful regulation about the quality and proficiency of advisors is lacking. We ask that BC take a leadership role and raise the bar for advisors and the millions of consumers they serve.

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We look forward to working with the Government of British Columbia as it modernizes the Acts. 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
President and CEO

Caron Czorny, FLMI, ACS, CFP, CLU, CH.F.C., EPC, CHS
Chair, National Board of Directors

APPENDIX

Raising the Professional Bar:
Greater Consumer Protection Through Higher Professional Standards

(please see enclosure)

Raising The Professional Bar

Greater Consumer Protection Through Higher Professional Standards.

A New Way Forward

Advocis®
The Financial Advisors Association of Canada

A Message from Ed Skwarek, Advocis Vice-President, Regulatory and Public Affairs

Dear colleague,

Financial advisors play a central role in helping millions of Canadians realize their goals and aspirations. Families and businesses across Canada rely on advisors to provide advice on and access to suitable financial products and services. Obviously, Canadians should be able to place their confidence in their advisors, trusting that he or she meets rigorous standards of professionalism, proficiency and accountability. Unfortunately, this is not always the case.

Let's justify Canadians' confidence in advisors
In a country which has professionalized everything from accountants to veterinarians, it is surprising that anyone can hold themselves out as a financial advisor, regardless of training, licensing or financial acumen. What's more, important consumer safeguards on those who sell financial products such as mandatory continuing education and minimum levels of errors and omissions insurance vary widely by both province and industry sector. All too often, our current patchwork of laws and regulations leaves consumers exposed to unnecessary risks, such as incompetence and even outright fraud.

Let's raise the professional bar for all financial advisors
Advocis has a straightforward, cost-effective and efficient solution to this patchwork problem: a requirement that anyone who holds himself out to the public as a financial advisor be required to maintain membership in a recognized professional association of financial advisors. The provincial government would accredit only those advisor associations which meet our proposal's strict professional criteria. Advisors would be free to choose which association they wish to join; and consumers could pick their advisor based on the reputation of the advisor, his employer, and his association.

This professional association model will significantly enhance consumer protection. Consumers will be able to easily verify their advisor's credentials and disciplinary history across industry sectors. Advisors will have to comply with rigorous proficiency requirements and obey professional and ethical standards of conduct. An effective complaints and disciplinary process will deal with "rogue" advisors. And regulators and distributors will realize a variety of efficiencies through ongoing improvements in the competencies of all advisors.

Let's complement existing regulation, not duplicate it
The existing regulatory framework primarily focuses on insurance and securities products. Rather than introduce yet another layer of regulation, Advocis' proposal simply closes off current regulatory gaps. The result will be a regulatory regime which will provide effective review of the comprehensive approach to financial advice that most Canadians receive.

Given the tremendous gains our model promises to deliver to regulators, product producers and distributors, advisors and, most critically, Canadian consumers, *now* is the time to raise the professional bar.

Yours truly,

Ed Skwarek, BA, LL.B., LL.M.
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I. Addressing The Need For Enhanced Advisor Professionalism

Problems with the Current Regulatory Framework

Financial advisors play a critically important role for millions of Canadians. Through the provision of financial planning and investment advice, retirement and estate planning, disability coverage, long-term care and critical illness insurance, advisors help the public prepare for life's events and secure their financial futures. This is ever more important in an economic climate where governments, facing their own fiscal challenges, are expecting Canadians to be increasingly self-reliant.

Given their critical role, Canadians should be able to trust that financial advisors are proficient, up-to-date in their knowledge and in compliance with the highest standards of conduct and ethics. While this aptly describes the majority of advisors, there are inevitably some who do not meet these standards, and due to gaps in the current regulatory framework, consumers are exposed.

Problem #1: Anyone can call themselves a financial advisor, which means consumers face significant – and unnecessary – risk exposure.

Anyone, regardless of their training, experience or education, can hold themselves out to the public as a financial advisor – which means that anyone can provide the public with what is purported to be "financial advice", even with little or no financial acumen. This regulatory gap is exploited by fraudsters such as Earl Jones, who represented himself as a financial advisor despite not being registered with securities authorities. This is an extreme example, but it highlights the significant harm consumers could suffer when they place their trust in a title that they believe is regulated, but which does not actually guarantee any expertise.

Problem #2: Existing regulation is focused on the sales of products, not the ongoing relationship of trust between financial advisors and their clients.

Financial advisors help clients develop comprehensive financial plans and provide advice on investments that can help achieve those plans. This is often a multi-year relationship built on the client's trust in the advisor's expertise. Advocis believes that all professionals in such positions of trust should subscribe to a code of conduct and ethics that establishes an overriding duty to their clients. They should also maintain errors and omissions insurance to protect clients in the event that the advisor fails to live up to that code.

But rather than focusing on this important relationship, existing regulation is based on the sales and distribution of financial products, and is further fragmented based on the type of product, whether it be life insurance, mutual funds or other securities. There is no industry-wide requirement that advisors subscribe to codes of conduct or maintain responsible levels of errors and omissions insurance. The result of this is that, depending on the type of product purchased, consumers could be receiving substandard levels of protection. Advocis believes that consumers should enjoy high

degrees of protection governing their entire advisory relationship, and this should not vary with the type of financial product that is needed to fulfill the consumer's financial plan.

Problem #3: There is no firm and clear requirement for advisors to keep their knowledge current.

Before obtaining their license to sell life insurance, mutual funds or other securities, financial advisors must demonstrate their initial proficiency in the product. Life insurance advisors are required to meet provincial licensing standards and to pass the Life License Qualification Program. The Mutual Fund Dealers Association of Canada (MFDA) designates as Approved Persons those individuals who meet the MFDA's registration standards and pass a designated mutual funds licensing exam. The Investment Industry Regulatory Organization of Canada (IIROC) designates as Registered Representatives those individuals who meet IIROC's registration standards and pass the Canadian Securities Course.

While these measures ensure the advisor's understanding of the product at the time of licensing, the industry is constantly evolving and static knowledge quickly becomes obsolete. But under the current framework, regulators' requirements for continuing education (CE) vary by product sector and even by province. In the life insurance sector, some provinces require advisors to complete several CE credit hours each year, some permit holders of educational designations to satisfy reduced requirements, and other provinces have no CE requirements whatsoever. For mutual funds, MFDA Rules speak only vaguely to CE, stating that it "should be provided". IIROC takes a clear stance and requires that advisors complete CE on both compliance and professional development matters.

Advocis believes that, regardless of product sector or province, advisors should be required to complete CE to maintain their license in good standing. Current regulations could allow advisors to become seriously deficient in their knowledge, posing a risk to consumers.

Problem #4: There is no effective, industry-wide disciplinary process.

Individual insurance or securities regulators are empowered to impose a variety of sanctions on advisors found guilty of misconduct, including stripping those advisors of their license or registration. However, a regulator's enforcement powers are limited to its respective sector – which does not reflect the business reality that the majority of advisors operate across sectors, and in assembling a client's financial plan, the advisor will likely recommend a combination of products that span those sectors.

This sectoral approach leaves consumers exposed. The types of serious misconduct that 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. But currently, if an advisor is expelled from the mutual fund sector, for

example, that advisor can continue to sell segregated funds in the insurance sector. Advocis believes this type of "sector hopping" must be eliminated.

Also currently lacking is an easy mechanism for the public to verify their advisor's registration credentials. Regulators maintain their own individual websites where the public can verify their advisor's registration, but the information is valid just for that sector. Generally, the public does not understand the product-centred approach to regulation and the need to verify their advisor's status with each individual regulator. In the example above, if the advisor's client had only reviewed the advisor's standing with the provincial insurance regulator, the client would not have become aware of the serious sanction in the mutual funds sector.

The Solution: Require that Financial Advisors belong to an Accredited Professional Association

Fortunately, the solution to the problems identified above is simple, straightforward, and does not require significant government action or resources: anyone using the professional title of "financial advisor" should be required to maintain ongoing membership in an accredited professional association.

To be accredited, the professional association would be required to have the following characteristics:

- a code of conduct and ethics requiring, inter alia, the prioritization of the client's best interests;
- a requirement that members maintain errors and omissions insurance;
- elevated minimum initial proficiency standards, including addressing the proficiency standards of fee-only planners who do not sell financial products;
- continuing education requirements that address both substantive and professionalism matters;
- a best practices manual or practice handbook and information resources for members;
- a governance structure that includes representation from both financial advisors and the public;
- a complaints and disciplinary process that empowers the association to suspend or cancel the advisor's membership; and
- a public-facing database whereby clients can conduct a "one-stop" check of their advisor's credentials and disciplinary history.

Today, many financial advisors voluntarily choose to belong to professional associations such as Advocis that feature many of the characteristics listed above. These associations help advisors maintain high professional standards in serving their clients. This proposal seeks to codify that commitment to professionalism to encompass all advisors, and builds on the current sales-focused regulatory framework.

In essence, the proposed solution emphasizes proficiency, ethical standards, and accountability in the client–advisor relationship.

Membership in a professional association would mean that sellers of financial products and services put the interests of consumers first and provide them with proficient professional service. In particular, consumers would benefit through:

- the ability to review the credentials and disciplinary history across product sectors of a prospective financial advisor in an easily-accessible format;
- greater assurance that the financial advisor they select will meet a consistently high level of professionalism and accountability;
- greater protection from unqualified and unethical financial advisors, due to both higher licensing standards and the presence of errors and omissions insurance; and
- a responsive and robust complaints and disciplinary process that can remove unscrupulous actors from the industry and prevent further harm.

Regulating usage of "financial advisor" is timely, appropriate and necessary

Financial advisors are one of the last groups of specialized practitioners whose professional title is not regulated by law. While other professions such as medicine, law and engineering have had their professional titles regulated for over a century or more, in recent years many other areas of professionalized activity have become similarly regulated. For example, in Ontario, the title of Social Worker is restricted to registrants of the Ontario College of Social Workers and Social Service Workers, and in Alberta, the Alberta Boilers Safety Association, and the Petroleum Tank Management Association of Alberta is restricted to registrants of these associations.

With so many people struggling to meet their retirement goals, with new families starting out without proper financial planning in place, and with government policies increasingly shifting the responsibility for Canadians' future financial needs onto individuals, now is the time to regulate the use of the professional title of "financial advisor."

II. Understanding The Professional Membership Association

This paper now turns to a more detailed look at the characteristics of proposed professional associations. (For an overview of the current regulatory framework, its shortcomings, and the virtues of the proposed professional association model, please see Appendix A, attached hereto.)

a. Who will belong?

Subject to several narrow and easily identifiable exceptions listed below, everyone who sells financial products to consumers, and everyone who offers financial advice and planning to the public, should be required to maintain membership in a recognized professional association. This would include:

- individuals who are licensed to deal with the public with regard to life and health insurance under insurance legislation;
- individuals who are registered by a securities regulator in any advisor category under National Instrument 31-103 and are licensed to sell or provide advice to the public with respect to financial products;
- individuals who hold themselves out by titles or claimed credentials that suggest financial advice-giving expertise, such as "financial advisor," "investment advisor," "wealth planner," "wealth advisor," "financial planner," "estate planner," and "retirement planner" or such other titles as may be designated by regulation, regardless of whether they are required to be licensed or registered to sell or provide advice regarding financial products; and
- individuals who hold themselves out as pensions or group benefits consultants who are not otherwise captured by the criteria above.

b. Who will be excluded?

It is important to note that the professional association requirement will not capture these clearly identifiable classes of financial services practitioners whose activities may be characterized as a form of "financial advice," such as:

- mortgage brokers and real estate agents;
- bank tellers who offer advice about deposit products;
- licensed accountants (CAs, CGAs, and CMAs) who provide financial advice ancillary to their provision of accounting and tax advice; and
- lawyers who offer financial and tax advice ancillary to providing legal advice.

c. Membership in a professional association as a condition of continued licensing

Individuals who hold themselves out as financial advisors would be required to belong to a professional association. Proof of membership would be a condition of the individual's registration or licensing (including license renewals) in the securities or insurance sectors. If an individual ceases to be a member of a professional association, his or her licensing or registration would also contemporaneously be in abeyance.

d. Regulators will designate associations

The relevant regulator would publicly designate as an approved professional association any membership association which it recognizes as fulfilling the necessary criteria (as described in Section 1 of this document). This would require regulators to draft the conditions of recognition necessary for accreditation as an approved professional association, to identify existing organizations as plausible candidates for recognition, and to invite candidate organizations to apply for recognition.

To be successful in their application for accreditation, candidate associations would have to agree to the following conditions:

- a commitment to meet specific criteria, which could include guidelines for the management and governance of all aspects of the operation of the association;
- execution of a memorandum of understanding with the regulatory body whereby the candidate association agrees to meet the aforementioned criteria while maintaining its accreditation;
- a commitment to pay for periodic audits, commencing with an audit within 12 to 18 months following recognition; and
- an acknowledgment that the regulatory body may revoke recognition of the candidate association.

It is likely that more than one association would be recognized by the regulator at the outset of implementing the proposed professional association model. Recognized associations would register financial advisors as members while building the systems and infrastructure required to meet their commitments to the regulator. If a professional association was found to have failed to meet its obligations and is unable to correct such deficiencies within a reasonable period, its recognition could be terminated. At that point, the defunct organization's members would be required to transfer to another professional association, and be directed to meet the new association's registration requirements within a specified period of time.

e. Proficiency standards for all financial advisors

All recognized professional associations would publish their proficiency standards. All financial advisors would be required to file an annual Certificate of Professional Standing issued by their association, as a condition of ongoing licensing or registration in the industry. In addition, all financial advisors would be required to meet a proficiency standard that encompasses the knowledge and competencies that their recognized professional association considers to be appropriate.

Initial proficiency standards for membership would be premised on the assumption that everyone who is licensed or registered to sell financial products meets the initial requirements for membership in a recognized professional association. However, all members would be required to fulfill ongoing continuing education requirements, which would have a structured component.

Accordingly, all recognized professional associations would accept, for the purposes of admitting individuals to membership, certain approved evidence of initial proficiency. For individuals who are life agents or securities representatives, sufficient evidence would lie in the fact that they currently meet the respective licensing or registration requirements for life agents or securities representatives. In the case of the individual who is a fee-only financial planner and receives no compensation directly or indirectly from the sale of financial products, the evidence of initial proficiency would lie in the fact that he or she currently holds a recognized financial planning designation. However, associations could, upon application, designate an individual as proficient, based on relevant education and industry experience.

The following designations would be granted initial proficiency recognition, provided that the fee-only advisor is in good standing with one of the designation-granting bodies:

- Certified Financial Planner™ (CFP™), sponsored by the Financial Planning Standards Council;
- Personal Financial Planner (PFP™), offered by Canadian Securities Institute;
- Certificate in Financial Planning (Planificateur financier [Pl. fin.] designation), sponsored by the Institut québécois de planification financière (IQPF);
- Registered Financial Planner (R.F.P.), sponsored by the Institute of Advanced Financial Planners;
- Chartered Financial Consultant (CHFC), sponsored by Advocis, the Financial Advisors Association of Canada;
- Certified Health Insurance Specialist (CHS™), sponsored by Advocis, the Financial Advisors Association of Canada;
- Chartered Life Underwriter (CLU®), sponsored by Advocis, the Financial Advisors Association of Canada; and
- Chartered Financial Analyst (CFA), sponsored by the CFA Institute.

Under the proposed model, all financial advisors who hold themselves out as financial planners would be required to hold in good standing one of the above-noted financial planning designations.

f. Continuing education requirements

All financial advisors would be subject to ongoing continuing education requirements. These would include course requirements established by professional associations in consultation with industry regulators and firms. Individuals would be given credit by their association for mandatory continuing education taken in compliance with the requirements of regulators, but could be subject to additional requirements set by their professional association of choice. For example, all financial advisors could be required by their association to take courses on professional ethics and their association's code of conduct within a specified time after becoming members.

The main features of the proposed membership model with regard to continuing education include:

- all financial advisors would be required to fulfill competency-based continuing education requirements established by their association;
- professional associations would complement the proficiency standards and continuing education requirements of regulators and coordinate their continuing education programs with the requirements of regulators;
- professional associations would be required to credit their members for all continuing education completed in compliance with the requirements of a securities or insurance regulator or licensing body;
- professional associations would develop systems that facilitate the tracking of continuing education course requirements and course completions, with such systems being readily accessible to members and regulators; and
- professional associations would require all members to take continuing education courses related to professional ethics and to the association's professional standards and code of conduct, within a prescribed period of time after an individual becomes a member of the association.

g. A code of professional conduct

All financial advisors would be required to subscribe to their professional association's code of professional conduct, and abide by their association's rules of professional conduct in all of their dealings with third parties (i.e., the application of the code and rules would not be limited to the financial advisor-client relationship). Any code of professional conduct would of necessity establish and explicate:

- the priority of the client's interest;
- issues of misconduct (including criminal convictions and regulatory infractions);
- the duties surrounding conflicts of interest;
- the duty to provide competent service;
- the duty to act with honesty and integrity;
- the duty to preserve and protect client confidentiality; and
- the duty to cooperate with the association and regulators.

h. An errors and omissions insurance requirement

All financial advisors, and their corporations and/or agencies, would be required to carry professional liability insurance relating to the activities they ordinarily engage in as financial advisors.

i. A public registry of financial advisors

Professional associations would participate in a public registry of financial advisors which would be accessible on the Internet and through other appropriate modes

of public inquiry. The public registry would enable any member of the public to conveniently access information about an individual's qualifications and registration/licensing status and professional conduct as a financial advisor.

j. A best practices manual and information resources for members

Professional associations would be required to compile and make available online a best practices manual/practice handbook. They would also be required to prepare and circulate information materials, such as online and e-mail bulletins concerning regulatory requirements and developments, and membership disciplinary proceedings.

III. Implementing The Professional Membership Requirement

For reasons of Canadian constitutional law, the proposal for financial advisors to belong to a professional association would need to be implemented at the provincial level. Securities and insurance regulators would require individuals who are licensed to sell financial products, or who otherwise hold themselves out to the public as financial advisors, to belong to an association. Fee-only financial planners who do not sell financial products and are outside the scope of securities and insurance legislation would still be required to be members of an association.

a. Models of self-governance: self-regulatory organization vs. delegated administrative authority

The professional association must be recognized as an official regulatory body of financial advisors by provincial governments. This recognition can be accomplished in two primary ways: (i) as a full-fledged self-regulatory organization; or (ii) as a delegated administrative authority.

(i) self-regulatory organization

The self-regulatory organization model is the traditional approach to professional self-regulation. Examples of organizations constituted under this model include the Law Society of Upper Canada, the College of Physicians and Surgeons of Ontario, the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada.

Regulatory power is vested in these organizations through provincial legislation (such as the Law Society Act) or official recognition by a government agency (such as a CSA recognition order of the MFDA). Obtaining this recognition is relatively challenging; the vetting process is rigorous, the standards to be met are high and the process can take several years.

Once approved, though, this model grants the organization a relatively large degree of autonomy – the organization is empowered to make rules governing a wide array of matters (including newly emerging areas) without having to go back to the province for approval. They are not subject to continuous government oversight; they are largely trusted to govern their own affairs, with only occasional reporting to, and reviews by, the government. To maintain the public's confidence as being a true professional regulator, they generally do not engage in any public-facing advocacy efforts that promote the profession or the organization's members.

(ii) delegated administrative authority

The delegated administrative authority (DAA) model is a relatively new way of obtaining recognition as a professional regulator. DAAs are not-for-profit corporations that assume the day-to-day operational responsibility for licensing, education, complaints handling, inspection and enforcement matters as described in government legislation. DAAs reduce the government's footprint: the association's employees

are not public servants and they are self-financing, largely through fees paid by the association's members. This model has gained acceptance in several provinces: notable examples include Ontario's Travel Industry Council, Alberta's Boilers Safety Association, and the British Columbia Safety Authority.

While the process of obtaining DAA recognition is less cumbersome than obtaining recognition as a self-regulatory organization, the powers granted to the DAA are more limited in scope. The province retains overall accountability and control of relevant enabling legislation; it monitors and remains accountable for the overall performance of each authority. DAAs have certain reporting obligations to the government, such as annual reports and audited financial statements, and they can be subject to operational reviews.

b. What organizations are likely to qualify for accreditation as a professional association?

The answer will largely depend on the accreditation standards that are set by the regulator. Also relevant will be the estimate, on the part of potential applicant organizations for accreditation, of the potential benefits and costs of meeting the accreditation standards and of operating as a professional association.

The requirement as outlined is not premised on onerous accreditation standards. It should be assumed that the standards would not be so burdensome that they would not be satisfied by a number of existing organizations, including associations that currently provide professional resources to financial advisors.

c. Requiring membership in a professional association in the securities sector

Most Securities Acts across the country allow that province's securities commission to prescribe rules, including criteria that an applicant must satisfy prior to registration: see, for example, sections 143 (1) and (2) of the Securities Act (Ontario) or 223 and 224 of the Securities Act (Alberta). Using this discretion, securities commissions could make membership in an association one of these criteria. Alternatively, National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations could be amended to require membership in an association as a condition of registration.

d. Requiring membership in a professional association in the insurance sector

Most Insurance Acts across the country do not provide the province's Superintendent of Insurance with the explicit authority to prescribe licensing conditions. However, most of these acts do provide broad latitude for the Superintendent to set the standards for determining whether a candidate is "suitable" for licensing.

Using this broad latitude, the Superintendent could deem that membership in a professional association speaks to the candidate's suitability to obtain and maintain

an insurance license in the province. In provinces where the Superintendent is not granted this discretion regarding suitability, the province's Insurance Act could be amended to either give the Superintendent such discretion, or the membership requirement could directly be prescribed in the Insurance Act.

e. Governance, discipline, and enforcement

(i) promoting the public interest

It is essential that any approved professional association represents the interests of consumers and the broader public interest, as well as the interests of its member financial advisors. Approved professional associations should be not-for-profit entities dedicated to financial advisor professionalism in the public interest. It is essential that professional associations be entirely independent from financial institutions, as well as product manufacturers and distributors.

The governance arrangements of all recognized professional associations, which would be set out in their charters, would include provisions for effective public representation. In particular:

- every recognized professional association would have public directors on its governing body, and also on any board committee responsible for professional conduct, discipline, advocacy, and policy and regulatory affairs; and
- public directors would be appointed in accordance with a suitable process that is appropriately independent in nature and designed to recruit qualified individuals.

(ii) governance issues

Initial membership application. With regard to applying for membership in a professional association, financial advisors would be permitted to apply for membership in an association of their choice. This would be the case even if they are already affiliated with a professional association at the time when they are required to apply to a recognized association for the purpose of membership. For example, the fact that an advisor holds a financial planning designation and is affiliated with the professional association that issued the designation will not make him or her a member of that association for the purposes of the professional association proposal.

Membership suspension or termination. An individual whose membership in a professional association is suspended or terminated as a consequence of his or her association's disciplinary proceedings, or whose membership is suspended as a consequence of the suspension of his or her license or registration by a regulator, would not be able to be employed in the industry as a financial advisor until he or she is again a member in good standing.

An individual who has had his or her license or registration suspended, cancelled or made subject to ongoing conditions, or who has had his or her membership in an association

suspended, cancelled or made subject to ongoing conditions, would be required to disclose his or her current status when applying for membership with a recognized association.

Show cause. An association would be entitled to require an individual who has had his or her license or registration suspended, cancelled or made subject to ongoing conditions, or who has had his or her membership in any association suspended, cancelled or made subject to ongoing conditions, to show cause why he or she is fit to be accepted as a member or to continue as a member.

Sharing of membership information. Professional associations and regulators would inform each other in a timely manner with regard to any changes in the membership and licensing or registration status of individuals. Upon being informed that the licensing or registration status of a member has been suspended, revoked, or made subject to conditions, or that the member is the subject of disciplinary proceedings, an association would take appropriate steps. Similarly, regulators would initiate a review of the licensing or registration of an individual upon being informed that his or her association membership has been suspended, revoked or made subject to conditions, or that his or her license or registration has been revoked, suspended or made subject to conditions by another regulator.

It would be necessary to carefully consider how to design a system where licensing and registration and association membership are inter-dependent, so that suspension or termination of any one (licensing, registration, association membership) could result in suspension or termination of the other(s). Fairness and due process implications would need to be studied, and a process would need to be designed to ensure fair treatment for the individual.

(iii) the complaints and disciplinary process

No duplication. Professional associations would complement but not duplicate the enforcement and disciplinary functions of regulators. In particular:

- a professional association's complaints and disciplinary process would enforce the association's rules and standards;
- a professional association's complaints and disciplinary process would not replace or supplant the disciplinary process of securities and insurance regulators;
- a professional association would have considerable discretion with regard to the investigation of complaints and the initiation of professional discipline, in order to ensure that association resources are used effectively to protect the public and complement the efforts of regulators; and
- a professional association, in considering whether to investigate complaints or initiate a disciplinary proceeding, would seek to conserve association resources and avoid duplicating the complaints and disciplinary processes of regulators.

Priority to public protection. As well, a professional association, in its complaints and disciplinary processes, would give priority to protecting the public by:

- ensuring that individuals who violate industry requirements in any one sector are not permitted to continue to be employed in the industry without further review; and
- exercising its authority to suspend or revoke an individual's membership in the association in specified circumstances that, while outside the scope of the regulatory jurisdiction of industry regulators, demonstrably indicates a lack of professional integrity or unsuitability to offer financial services to the public (i.e., convictions for criminal and regulatory offences, which indicate a lack of professional or personal integrity).

Initiation of proceedings. A professional association would be entitled to initiate disciplinary proceedings where there is reason to believe that a member has violated the code of professional conduct. Public directors of the association would participate in directing the investigation of complaints and the initiation of disciplinary proceedings. The association would be entitled to initiate disciplinary proceedings whenever it considers it appropriate to do so, and would be empowered, in the course of its disciplinary process, to suspend or terminate membership, and to impose conditions on membership.

Power to delegate. Investigations and the prosecution of disciplinary proceedings could be delegated by a professional association to a third party accountable to the association, which could establish its own hearing panel. Alternatively, two or more professional associations could jointly establish a tribunal to hear and determine matters for any associations willing to participate in a joint fashion. The members of such a tribunal would be drawn from the participating associations.

(iv) advisor competence and incapacity

A professional association could investigate a member's competence and capacity to provide services to the public, and initiate proceedings and suspend or revoke membership or impose other conditions.

(v) administrative sanctions

A professional association would have the authority to suspend or terminate membership, and to impose conditions on membership for administrative reasons, including for non-payment of fees, for failure to fulfill continuing education requirements, and for suspension or termination of licensing or registration by a regulator.

(vi) cooperation with all industry regulators

Professional associations would cooperate with financial industry regulators with regard to complaints and disciplinary matters. Individual members would be required to consent to the sharing of information with financial industry regulators in regard to complaints and disciplinary matters. In general, a professional association would not proceed with any complaints or disciplinary proceedings in the event other

proceedings, initiated by a regulator and based on the same impugned conduct or circumstances, are already underway. As well, professional associations would cooperate with financial industry regulators with regard to continuing education programs and, when possible, participate in their policy development processes. Finally, the relevant regulators would establish a process for accrediting professional associations and monitoring their compliance with standards.

IV. How Enhanced Professional Standards Will Benefit Consumers, Advisors and Other Stakeholders

a. Promoting the interests of clients and consumers

The proposed membership model would promote the consumer interest in a number of areas.

(i) a mandated code of professional conduct and ethics

As noted above, all financial advisors would be required to comply with the code of professional conduct of their association of choice. Such a document would explicitly codify the following:

- recognition of the priority of the client's interests over those of the advisor;
- duties respecting conflicts of interest, including disclosure to the client of all real and apparent conflicts;
- the duty to provide competent service, performed with honesty and integrity;
- the duty to respect client confidentiality; and
- an accessible enforcement mechanism for disciplining and punishing members for misconduct, including criminal convictions and regulatory infractions.

(ii) proficiency standards and continuing education – the cornerstone of professionalism

Professional associations would establish initial proficiency standards for financial advisors, and would administer continuing education requirements designed to ensure that all financial advisors maintain a high standard of proficiency.

Such associations would be required to actively administer their codes of conduct, so the public is assured that member advisors understand and fulfill the ethical obligations they owe to their clients. Moreover, all financial advisors would be required to file an annual "Certificate of Professional Standing" issued by their association. This would be a condition for maintaining a provincial license or registration to sell financial products – and to ensure that the high standards to provide ongoing financial advice are met.

Individuals who want to hold themselves out as competent practitioners in areas of professional specialization, such as financial planning, would be required to hold in good standing the necessary recognized designations.

Professional associations' annual continuing education requirements would focus on the financial advisor's duties to clients. These CE requirements would complement and build on the practice proficiency standards and CE requirements of regulators.

(iii) best practices and member information resources

Professional associations would publish information resources for members, such as a best practices manual, and periodic bulletins updating members on important regulatory requirements and developments, further ensuring client protection.

(iv) professional accountability — integrated across sectors

Professional associations would be empowered to suspend or revoke membership, or impose various conditions on membership for unprofessional conduct, including violations of regulatory requirements, failure to cooperate with regulators, and criminal and regulatory offences. Actions or omissions which impugn or bring into disrepute the advisor's professional integrity or competence, or that of the profession as a whole, and their suitability to offer financial advice to the public, would be reviewable.

An association's disciplinary action would have consequences for a member's ability to sell financial products as a provincial licensee or registrant. If a member of the association is expelled, that individual would be prevented from selling financial products. As well, if any regulator revoked or imposed conditions on a member's ability to sell financial products, that member's association would take appropriate action to suspend, revoke or impose conditions on his or her membership. Such measures would further buttress the actions of the particular regulator by imposing conditions on selling products or providing advice.

As noted above, a regulatory requirement that advisors must be in good standing with a professional association would prevent unscrupulous individuals from simply moving to a different financial sector and seeking licensing or registration.

The resulting regulatory umbrella created by professional associations would close current gaps in the enforcement and disciplinary reach of regulators, by ensuring that individuals who violate industry requirements in any one sector would not be permitted to continue activity in the industry without proper review.

Membership associations would have considerable discretion with regard to the investigation of complaints and the initiation of professional discipline, in order to ensure that association resources are used effectively to protect the public and complement the efforts of regulators. Associations would publish disciplinary proceedings and would follow a process of natural justice regarding procedural rights (hearing, tribunal, appeal process, etc.).

(v) ease of public access to information on financial advisors

Professional associations would be required to make information about their members conveniently accessible in a single public database. This would enable the public to easily determine if an individual is a member of a professional association and review his or her credentials.

b. Benefits to other key actors in the securities and insurance sectors

The proposed membership model would work to promote the interests of financial advisors, governments and regulators, and product providers and distributors.

(i) financial advisors would benefit from:

- enhanced public trust, status and confidence in advisors as professionals,
- access to resources that complement and facilitate standards and compliance with regulatory requirements, and
- a raised professional bar, through improved education and standards and the ready removal – in a public and effective manner – of unethical colleagues who tarnish the industry as a whole.

(ii) government and regulators would benefit from:

- the delivery of enhanced consumer protection and the "reining in" of unethical advisors who move from sector to sector;
- additional protection of the wider public from unqualified or unaccountable financial advisors;
- additional professional support for the government policy objective of increased individual financial responsibility for future financial needs;
- a reduced regulatory burden created by the various professional associations proactively complementing the current regulatory requirements and enforcement; and
- the combined expertise of the various professional associations, all of whom will contribute to the development of policy and implementation of effective regulation.

(iii) product providers and distributors would benefit from:

- the reliable professionalism of financial advisors representing their firms and products;
- the prevention of unethical advisors moving from one company to the next; and
- the development of a stronger platform to support the recruitment of new advisors into the industry through enhanced professional standing.

Appendix A: The Current Regulatory Framework and the Professional Association Proposal

The following table indicates the limitations and drawbacks of the status quo and the benefits to consumers, advisors, and other stakeholders.

Advantages of professional membership over the status quo

Issue	Insurance	MFDA	IIROC	Proposed professional association membership
Who is covered?	Insurance agents	Mutual fund salespersons	Securities salespersons	**Everyone** who holds out as a financial advisor
Public represented in governance?	**Yes**	**Yes**	**Yes**	**Yes**
Financial advisors are "at the table" when regulators make policy?	Only to a limited extent.	Dealer members of the MFDA are the main stakeholder consulted.	Dealer members of IIROC are the main stakeholder consulted.	**All associations** will advocate with regulators on behalf of member financial advisors and consumers
Standards focus on consumer interest or on distributor / dealer interest?	Insurance focus	Mutual fund dealer focus	Securities dealer and consumer focus	**Consumer / client relationship focus**
Establishes proficiency requirements for all financial advisors to meet?	Licensing requirements focus on insurance	Registration requirements focus on mutual funds	Registration requirements focus on securities	**Builds on standards of insurance, MFDA and IIROC with structured continuing education requirements**
Mandatory competency-based Continuing Education?	No mandatory client-focused content	No specific continuing education requirement	No mandatory client-focused content, but focus on product knowledge to ensure proper service to investing public	**Yes.** Mandatory courses on ethics, conflicts of interest, duty to client, leveraging, regulatory / compliance developments
Use of a Code of Professional Conduct outlining duties and obligations to clients and public?	No enforceable dedicated Code of Professional Conduct articulating duty to clients, as such, but Insurance Councils in Western Canada have codified conduct rules in their by-laws	No dedicated Code of Professional Conduct articulating duty to clients, as such	**Yes** through the importation of CSI's Conduct and Practice Handbook	**Yes**

Advantages of professional membership over the status quo (continued)

Issue	Insurance	MFDA	IIROC	Proposed professional association membership
Participation in a public registry that covers all financial advisors?	No	No	No (IIROC Advisor Report is limited to advisors with IIROC members)	**Yes**
Can curtail ability of unethical or unregulated individuals to hold themselves out to the public as financial advisors?	No. Only able to suspend or cancel insurance license.	No. Only able to suspend or cancel status as MFDA advisor.	No. Only able to suspend of cancel status as IIROC advisor.	**Yes.** Including remedies against individuals who do not belong to an association (the "Earl Jones" problem)
Ability to prevent employment as a financial advisor of individuals who do not meet standards?	No. Loss of insurance license does not prevent employment as MFDA or IIROC advisor	No. Loss of MFDA status does not prevent employment as IIROC or insurance advisor	No. Loss of IIROC status does not prevent employment as MFDA or insurance advisor	**Yes.** While an individual's professional association membership is suspended or cancelled, they are barred from acting as an insurance, MFDA or IIROC advisor.
Ability to deal with misconduct relevant to integrity and suitability that is not within the regulator or SROs scope?	No	No	No	**Yes**

About Advocis

Advocis, The Financial Advisors Association of Canada, is the oldest and largest voluntary professional membership association of financial advisors in Canada. Advocis is the home and the voice of Canada's financial advisors. Through its predecessor associations, Advocis proudly continues a century of uninterrupted history of serving Canadian financial advisors, their clients, and the nation.

With over 11,000 members organized in 40 chapters across Canada, Advocis serves the financial interests of millions of Canadians.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members are professional financial advisors who adhere to an established professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain appropriate levels of professional liability insurance, and put their clients' interests first.

Across Canada, no organization has members who spend more time working one-on-one on financial matters with individual Canadians than us. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

Questions?

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