



Raising The Professional Bar

Greater Consumer Protection Through Higher Professional Standards

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Raising The Professional Bar

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Introduction and Executive Summary

Millions of Canadians rely upon financial advisors to provide them with financial planning and investment advice, including access to suitable financial products and services to achieve those plans. Given the financial advisor's central role in securing their financial futures, Canadians should be able to trust that their advisor adheres to industry-wide standards of professionalism and accountability. Unfortunately, this is not the case: currently, in nearly every province, anyone can hold themselves out as a financial advisor, and the standards for important consumer safeguards such as continuing education courses or errors and omissions insurance vary widely by province and sector. The current system leaves consumers exposed.

Advocis believes the current situation can be greatly improved with a straightforward new requirement: all persons who hold themselves out to the public as financial advisors, regardless of whether they sell particular financial products, should be required to maintain membership in a recognized professional association.

This requirement will significantly enhance consumer protection by raising the professional bar for all financial advisors. Advisors will be required to comply with the association's high proficiency and conduct standards that are enforced with an effective complaints and disciplinary process. Consumers will be able to easily verify their advisor's credentials and disciplinary history across industry sectors. Advisors themselves will benefit from enhanced public trust, status and confidence in them as true professionals, while seeing unethical colleagues who tarnish the industry removed in an efficient manner. Product providers will enjoy enhanced professionalism from the individuals who represent their firm to the public and a stronger platform from which to recruit new advisors.

This proposal is designed to complement the existing regulatory framework, which is largely focused on the sales of specific insurance and securities products. Rather than duplicate the efforts of existing regulators, the proposal fills in critical regulatory gaps that arise from this product focus and better reflects the comprehensive approach to financial planning and investment advice that most Canadians receive. The proposal can only be implemented with the cooperation of provincial governments, through legislative or regulatory action, and the provinces must also assess which associations should be accredited, based on their expertise in the industry and ability to deliver the proposal's benefits.

Given the tremendous benefits to regulators, advisors, product providers, and most importantly, consumers, it is time to raise the professional bar by requiring that all financial advisors become members of a professional association and abide by its high standards of proficiency and conduct.

I. Addressing The Need For Enhanced Advisor Professionalism

The problem: today, anyone can call themselves a financial advisor, which means consumers face significant – and unnecessary – risk exposure.

The solution: require financial advisors to belong to a professional association.

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:

- easy access to a one-stop online database where they can review the credentials of individuals who hold out as financial advisors,
- greater assurance that a financial advisor they select will meet a consistently high level of professionalism and accountability,
- greater protection from unqualified and unethical financial advisors, and
- a responsive and robust complaints and disciplinary process, in the event their advisor failed to abide by his or her professional duties, or violated his or her code of professional conduct.

At present, the sales activities of financial advisors who sell products such as life and health insurance, mutual funds and other securities are regulated; they must be licensed by either their provincial securities or insurance regulator. Despite these minimal levels of regulation, the advisory conduct and compliance activity of financial advisors remains a major area of concern, since the proficiency standards required of advisors in their areas of practice after they have met the necessary licensing requirements to sell financial products vary greatly. Moreover, advisors are not currently mandated to subscribe to a code of professional ethics and conduct which establishes an overriding duty to consumers.

These gaps in the oversight of advisors have developed because current financial services regulation mirrors the structure of the financial services marketplace. Manufacturers, distributors and sellers of financial products and services dominate the marketplace. Regulators and self-regulatory organizations (SROs) oversee in their respective markets the brokers and dealers whose sales representatives deal with the public. (Hereafter, the term “regulator” or “regulators” describes all regulators, including SROs, in the securities and insurance sectors). In short, existing regulation, focused on the distribution of products and services, is not able to fully ensure that the interests of the consumer are properly served.

This problem is further compounded by the fact that the financial services marketplace is divided into multiple sectors, each of which has its own regulator. Since financial advisors often operate in more than one sector, the overall regulatory system cannot always ensure that an individual financial advisor is effectively regulated.

a. The consumer hazard is two-fold:

1. Anyone, regardless of experience and education, can hold themselves out to the public as a financial advisor, which means *anyone* can provide the public, regardless of their level of financial acumen and sophistication, with what is purported to be “financial advice.” The only existing prohibition on making such a representation to the public is that the person doing so is not selling financial products.

2. It is very difficult to prevent an individual who does not meet sufficient standards of proficiency or ethical conduct, or who violates the regulatory standards in a particular financial industry sector, from moving into another industry sector – e.g., if an advisor is barred from selling mutual funds, he or she can simply transition to the sale of segregated funds.

b. Regulating usage of “financial advisor” is timely, appropriate and necessary

Financial advisors and financial planners are one of the last groups of specialized practitioners whose professional title is not regulated by law. While the traditional professions of 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, in order to use the title of Social Worker, or to hold out that you are a social worker, one must be registered with the Ontario College of Social Workers and Social Service Workers.

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.”

c. The need to enhance financial advisor professionalism

The public and policymakers are increasingly concerned that existing regulation – which is focused on the “sell side” – is not able to fully ensure that the interests of the consumer are appropriately served, and that this trend in service will only increase as more sophisticated products come to market. As well, because the financial services marketplace is divided into different sectors, each with their own regulator(s), and because financial advisors often operate in more than one sector, the current regulatory system cannot always ensure that financial advisors are properly monitored and regulated. The overall result is increased risk exposure for consumers.

The present regulatory regime requires financial advisors who sell financial products to meet the licensing and registration requirements established by specific regulators. Life insurance agents are required to meet licensing standards and to pass the Life License Qualification Program (LLQP) exam, and in some jurisdictions they are also required to fulfill continuing education requirements. The Mutual Fund Dealers Association of Canada (the MFDA) designates as Approved Persons those individuals who meet the MFDA’s registration standards and have passed its mutual fund licensing program. The

Investment Industry Regulatory Organization of Canada (IIROC) designates as Approved Persons those individuals who have met IIROC's registration standards and passed the Canadian Securities Course.

Today, many financial advisors voluntarily choose to belong to professional associations that help them maintain high professional and ethical standards in serving their clients. The proposal described below seeks to codify that commitment to professionalism and builds on the current regulatory platform of licensing and registration requirements. In essence, the proposed solution emphasizes proficiency, ethical standards, and accountability, in the context of the client–advisor relationship.

d. The solution: membership in a professional association

Fortunately, the solution is simple, straightforward, and does not require significant government action or resources. As noted, membership in professional associations for financial advisors is currently purely voluntary. The proposed solution is simple: anyone representing him- or herself as a financial advisor would be required to:

1. maintain ongoing membership in a professional association which has a code of professional and ethical conduct, and
2. meet clearly specified proficiency standard(s), prior to offering financial advice to the public.

Professional membership associations would have the power when necessary to discipline a financial advisor who does not meet the prescribed standards. When warranted, an advisor could even be removed from the industry.

A simple requirement that all advisors belong to a professional association can be created by statute or regulation and will result in a significant enhancement of consumer protection by raising the professional bar for all financial advisors. Put into practice, such a requirement would establish associations as self-regulating mechanisms which would: (a) address and help prevent malfeasance by unscrupulous persons who seek to pose as financial advisors with the intent of defrauding or otherwise harming the public; and (b), act as a barrier to entry for advisors who cannot fulfill the minimum proficiency standards.

e. 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 to the public, should meet a minimum standard of proficiency and accountability. The following individuals would be subjected to the requirement of membership in a professional association for financial advisors:

- 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 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 prudential or capital markets products, and,
- individuals who hold themselves out as pensions or group benefits consultants who are not otherwise captured by the criteria above.

f. 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.

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. Delineating the professional association for advisors

Recognized professional associations would have the following features:

- governance that includes representation of both financial advisors and the public,
- a membership requirement based on the attainment of minimum proficiency standards in clearly identified practice areas,
- annual or bi-annual mandatory continuing education requirements,
- an enforceable code of professional conduct,
- an accessible and robust complaints and disciplinary process,
- the ability to suspend and cancel membership,
- a mandatory errors and omissions insurance requirement,

- participation in a public registry of financial advisors, and
- a best practices manual / practice handbook and information resources for members.

b. 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 licensing or registration in the securities or insurance sectors and if an individual ceases to be a member of a professional association, his or her licensing or registration also would be in abeyance.

c. 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. This would require regulators to draft the terms and conditions of recognition both necessary and sufficient for qualification 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 the application for recognition as a professional association, 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,
- agreement by way of a formal memorandum of understanding with the regulatory body whereby the candidate organization agrees to meet the aforementioned criteria while operating as a professional association,
- 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 within a reasonable initial period or any time thereafter, 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.

d. 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 financial planning designations would be granted initial proficiency recognition, provided that the fee-only planner 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™), sponsored by the Institute of Canadian Bankers,
- 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,
- 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.

e. 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 may be laid out as follows:

- 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.

f. 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.

g. 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.

h. 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.

i. 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 the OSC's 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. In Ontario, examples of recognized DAAs include the Travel Industry Council of Ontario, the Real Estate Council of Ontario and the Technical Standards and Safety Authority.

These organizations are delegated the responsibility for the day-to-day administration of a particular piece of government legislation. For example, the Travel Industry Council of Ontario administers the *Travel Industry Act* – including its registration regime, complaints-handling process and consumer compensation fund. Each DAA enters into an administrative agreement with the province and is accountable to a Minister (in Ontario, the Minister of Consumer Services).

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 largely retains control of rulemaking, but it will defer to the DAA's expertise for highly technical bulletins that affect public safety. DAAs are required to submit annual reports, business plans and audited financial statements to the province, and can be subject to operational reviews. Generally, any advocacy conducted by the DAA is limited to the extent that it can be seen as being in the public interest; for example, it could include initiatives that inform the public of their rights, or which advertise the value and role of the DAA itself in protecting the public.

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

For illustrative purposes this paper looks to the situation in Ontario. The Ontario Securities Commission (OSC) could make membership in an association a condition of ongoing licensing or registration. Subsections 143 (1) and (2) of the *Securities Act* (Ontario) authorizes the OSC to prescribe requirements for registration, including criteria a person must satisfy to qualify for registration and various terms and conditions of registration. National Instrument 31-103 could be amended to recognize membership in an association as such a condition.

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

Again, for illustrative purposes, consider Ontario: neither the *Insurance Act* (Ontario) or the *Financial Services Commission of Ontario Act* vests the Superintendent of Financial Services with the explicit authority to prescribe licensing conditions. However, existing legislation does provide broad latitude for the Superintendent to set the standards of suitability for licensing.

Accordingly, within Ontario's insurance sector there are two options available with respect to making membership in a professional association a condition of ongoing licensing. One option would require legislative changes within the *Insurance Act* to delegate to the Financial Services Commission of Ontario the responsibility to prescribe the requirements for registration — as is the case with the OSC in the securities sector. Alternatively, a requirement could be put directly into the *Insurance Act* (or other enabling legislation) that stipulates membership in an association is a condition for licensing. The second option would be for the Superintendent to exercise his or her discretion relating to the suitability of a person for licensing and deem membership in a professional association a necessary condition of licensing.

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 prudential and capital market 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 focus	Consumer / client relationship focus
Establishes proficiency requirements for all financial advisors to meet?	Licensing requirements focus on insurance only	Registration requirements focus on mutual funds only	Registration requirements focus on broader securities only	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	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	No dedicated Code of Professional Conduct articulating duty to clients, as such	Yes

Advantages of professional membership over the status quo (<i>continued</i>)				
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 or 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?

If you have questions or comments, please contact:

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