

October 4, 2021

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames,

Re: CSA Position Paper 25-404 – New Self-Regulatory Organization Framework

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to CSA Position Paper 25-404 on the New Self-Regulatory Organization (New SRO) framework.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We



advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.

2. OUR COMMENTS

Advocis supports the CSA's work in establishing a single national SRO. Consolidating SROs affords flexibility and efficiency in the regulatory framework. In addition, a consolidated SRO reduces investor confusion and can better address the changing needs of businesses and consumers. We applaud the CSA for all the work it has done on this initiative, as we recognize the complexity of modernizing a major piece of Canada's securities infrastructure.

The proposal to create a New SRO is a step in the right direction. However, we believe that the implementation of a new regulatory framework should reflect the diversity of interests among all stakeholders. It is important that the New SRO offers a level and accommodative playing field for stakeholders both large and small, and from across Canada.

We urge the CSA to leverage the title protection regulatory framework being pursued by several Canadian provinces and modernize financial services regulation by recognizing the professionalization of financial advice. This includes a recognition of the role of financial advisors in educating investors and the fact that access to product does not equate to access to advice. Lastly, we encourage the CSA to take an expansive approach to directed commissions and incorporation by ensuring a level playing field while ensuring consumers remain protected.

2.1 Improving Governance

Advocis supports the proposal that independent members form a majority on the board of the New SRO, with particular focus on those with expertise and knowledge in investor protection. However, with respect to the governance of the New SRO generally, we are concerned that it may be dominated by the interests of large financial institutions located in Central Canada. We urge the CSA to ensure that a diverse set of constituencies is represented in the New SRO, which would include smaller, independent dealers and those located outside of Central Canada.

Further, we believe that, as the primary client-facing constituents in the securities regulatory framework, financial advisors must also be represented in a meaningful way within the New SRO. We are disappointed to see that the New SRO could actually represent a step backward in this regard. Currently, while financial advisors do not have representation on the boards of



either IIROC or the MFDA (other than by those who also represent dealers), advisors have at least had an opportunity to provide some input through SRO regional councils. But with the New SRO, the CSA proposes to centralize and transfer current IIROC District Council decision-making functions to the board and staff of the New SRO, with existing SRO regional councils being demoted to having advisory roles.¹

If the New SRO is to remain responsible for the conduct supervision of financial advisors, then advisors deserve a seat at the table. We concede that this was not always the case: advisors were largely transactional conduits to the products offered by the dealers, and their archaic names in these structures (whether “Approved Person” or “Dealing Representative”) reflect this. The dealers were responsible for what was ultimately a sales tool. But this view is out of date. The CSA’s own recent publications demonstrate its recognition that the provision of financial advice has become a profession, with the focus shifting palpably from a product-first mindset to one which centres on the client relationship.²

Title protection efforts currently underway in Ontario, Saskatchewan and New Brunswick (so far, with more likely to come) further evidence this transition. On this development, it is worth noting that the existing SROs will likely apply to be credentialing bodies for the purpose of the title protection frameworks. This would move the existing SROs (and by extension, the eventual New SRO) even further into the realm of regulating advisors and professional advice. So even if the SROs were originally created to strictly represent their member-dealers, their scope of influence has clearly grown and professional advisors are a key and legitimate constituency that should be represented within them.

We remain open-minded as to how the advisor constituency is represented, so long as that representation is meaningful. The CSA proposes significant enhancements to investor representation on the New SRO, which we support; advisors could also be welcomed into those fora where they could provide the unique, balanced perspective that comes from being positioned ‘between’ the investor and the dealer.

In any event, financial advisors have earned their professional standing and they remain the face of the financial services industry to the consumer. The existing SRO structure does not give this important constituency a voice that is proportionate to their role in the sector. With the New SRO, the CSA has a prime opportunity to correct this longstanding oversight.

¹ We recognize that the CSA proposes some sort of “escalation mechanism” for regional issues, but this still represents another administrative layer in a structure where advisor issues already did not have prominence.

² See, for example: CSA Notice of Amendments to National Instrument 31-103 and 31-103 Companion Policy – “Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms)” (October 3, 2019). At: www.osc.ca/sites/default/files/pdfs/irps/ni_20191003_31-103_reforms-enhance-client-registrant-relationship.pdf; and CSA Consultation Paper 33-404 “Proposals to Enhance the Obligations of Advisors, dealers, and representatives towards their clients” (April 28, 2016). At: www.osc.ca/sites/default/files/pdfs/irps/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf.



2.2 Enhancing Investor Education and Access to Advice

Advocis supports the solutions presented by the CSA to improve investor education. However, we ask the CSA to be mindful that the most effective way of bolstering the public's financial literacy is to ensure that they have access to financial advice. It is the advisor that invests the time with the client to educate and explain the most relevant financial matters in an accessible, interactive and plain-language format.

While we appreciate the CSA's discussion that the New SRO must consider access to advice, we are concerned that the CSA is conflating "access to product" with "access to advice". For instance, under the section regarding the CSA's goal of improving access to advice, it speaks to proposing a broker arrangement between mutual fund and investment dealers to allow access to a broader range of products for consumers. While this is a practical solution to reduce mechanical frictions and something we can certainly support from a market efficiency perspective, the CSA's message only underlines that it still operates with the misconception that financial advice is about transacting in product. It is not. Financial advice is first and foremost about understanding the client's financial objectives and developing strategies to address those needs.³

To further "access to advice", the CSA should promote a regulatory framework that is competitive and viable for independent advisors who can prioritize clients' interests and are not beholden to any particular product manufacturer or financial institution. In doing so, the CSA should encourage a variety of delivery and compensation models and it should recognize that while cost is an important factor – and one that absolutely should be discussed openly with clients – it is not the only factor and the more relevant discussion should focus on value.

Multiple studies have shown that individuals who receive financial advice fare better than those who do not receive advice. A financial advisor can increase individual retirement savings by at least 50%,⁴ with material improvements to the advised consumer's behaviour regarding savings discipline and spending habits looming large.⁵ Other studies have demonstrated that investors prefer to work with advisors who understand their individual circumstances and can make recommendations based on their personal situation.⁶ These studies evidence that the benefits to consumers of financial advice lie not in access to product, but access to the advisor's holistic skill and professional conduct in the client relationship. It is this value that the CSA should be

³ For clarity, we also support the CSA improving access to product. Routes such as order-execution-only discount brokerages or robo-advisors are excellent at providing access to product, and there certainly is a role for these services. But these services do not provide professional advice (and the benefits thereof) and we urge the CSA to appreciate the distinction. Access to product is a means to an end, and not an end in itself.

⁴ Investment Executive, "Study shows value of financial advice" (June 25, 2020). At:

www.investmentexecutive.com/news/research-and-markets/study-shows-value-of-financial-advice/

⁵ The Conference Board of Canada, "Saving for the Future: Impacts of Financial Advice on the Canadian Economy". At:

www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=24991&lang=en_CA

⁶ Russell Investments, "2021 Value of an Advisor Study". At:

russellinvestments.com/Publications/US/Document/Value_of_an_Advisor_Study.pdf



mindful of unlocking for all investors. With this in mind, the New SRO should strive to create a level playing field for independent advisors, dealers of all sizes, and online platforms.

2.3 Strengthening Proficiency

Advocis supports establishing a nuanced proficiency-based registration framework and the ongoing work on the Client-focused Reforms including enhancements to proficiency standards and clarity to titles and designations. In setting its own proficiency standards, we ask the New SRO to consider the title protection frameworks that are currently being pursued by Ontario, Saskatchewan and New Brunswick. Surveys show that on average, half of respondents already believe that the title of “financial advisor” is regulated and serves as a meaningful indication of the user’s skills, education, and expertise.⁷ Incorporating the work done in these jurisdictions would efficiently harmonize interprovincial standards and reduce consumer confusion.

Regarding continuing education, the CSA encourages the New SRO to leverage the current IIROC program and the forthcoming MFDA program as a starting point. While streamlining continuing education programs is a step in the right direction, the CSA must address concerns regarding longstanding limited competition and unfairness in this space. In particular, IIROC has been using CECAP, which is owned by the parent company of CSI Global Education (CSI), Moody’s Analytics Global Education (Canada) Inc., as its exclusive accreditation service provider for continuing education programs for over fifteen years.⁸

CECAP charges an extraordinarily high price for its accreditation services: its \$585-per-credit hour price is an outlier, far above other well-established accreditation providers.⁹ In this arrangement, CECAP-affiliated CSI has an unfair competitive advantage over other course providers. While CECAP’s high prices discourage many other would-be providers from seeking accreditation,¹⁰ CSI effectively pays itself to accredit IIROC courses and therefore does not face the same economic barriers. This stifling competition is not good for advisors – and therefore consumers – and we urge the New SRO to open the selection of its accreditation service provider to a fair competition as soon as practicable.

⁷ Advocis, “Submission re the Regulation of Financial Advisor and Financial Planner Titles” (September 9, 2019). At: myadvocis.ca/wp-content/uploads/2019/09/190909-Advocis-re-FCAA-FA-FP-Titles-v2.pdf; Wealth Professional, “Advocis calls for ‘financial advisor’ title regulation” (October 26, 2018). At: www.wealthprofessional.ca/news/industry-news/advocis-calls-for-financial-advisor-title-regulation/249841

⁸ The Investment Dealers Association of Canada (IDA), which is the predecessor of IIROC, initially selected Harrington Lane to run CECAP in 2004. Subsequent to Harrington Lane’s withdrawal and sale in 2006, the IDA retained CSI Global Education to take over the CECAP program.

⁹ For example, Advocis’ affiliated The Institute for Financial Education charges \$125 per credit hour, which is in line with the rest of the (non-CECAP) market.

¹⁰ See, for example, the open letter from Learnedly, “Addressing the Conflicts of Continuing Education” (July 22, 2021). At: www.learnedly.com/blog/2021/7/22/addressing-the-conflicts-of-continuing-education



2.4 Reducing Industry Cost

The CSA has proposed that the fees in the New SRO be proportionate to the registrant's activities and has voiced the need to avoid regulatory duplication for dual platform dealers. We support this direction. It is critical that the New SRO's cost structure does not favour larger dealers and major financial institutions that have greater resources to comply with regulatory requirements.

The regulatory expectations on, and registration fees for, any particular dealer should be proportionate to the nature of the firm's activities and the risk those activities could represent to consumers. For example, mutual fund-only dealers generally represent less risk than dealers which transact in individual securities, corporate bonds, derivatives and margin accounts. The new fee structure should strive to ensure a thriving role for smaller, independent dealers that provide services to Canadians living outside of major urban centres and should reasonably relate to a firm's cost of being regulated.

2.5 Harmonizing Directed Commissions

Advocis supports a flexible approach to directed commissions and advisor incorporation. Incorporation enables advisors to take advantage of beneficial tax treatment and administrative benefits offered to incorporated entities, and to enhance contingencies and succession planning during these uncertain times. To Advocis' knowledge, consumers have not been harmed because of these arrangements. The MFDA has also previously found that advisor incorporation and directed commissions do not negatively impact investors.¹¹

Advisors in the insurance sector, as well as those on the MFDA platform – except in Alberta – have been allowed to engage in this practice for some time. However, investment dealers on the IIROC platform have been unable to reap the benefits of incorporation and directed commissions. This has created an unlevel playing field and needless regulatory burden where advisors licensed on more than one platform have been required to maintain more than one set of books. We urge the New SRO to modernize its practices and allow for incorporation and directed commissions in both the mutual fund and investment dealer divisions.

While the CSA has not reached a definitive conclusion on the treatment of directed commission arrangements under the New SRO regulatory framework, the creation of a Working Group to review the legal and taxation implications of these arrangements is a step in the right direction. We look forward to working with the Directed Commissions Working Group on this matter in the coming future.

¹¹ Application submitted by MFDA to Recognizing jurisdictions Re: "Mutual Fund Dealers Association of Canada Application for amendment and restatement of terms and conditions of order recognizing self-regulatory organization" (July 16, 2008). At: www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicyBCN/Application_letter_BC200840.pdf



2.6 Making OBSI Decisions Binding

The CSA will establish an OBSI Working Group to assess the need for an appeal or review mechanism regarding continuing efforts to make OBSI decisions binding. We ask the CSA to be mindful of the recommendation of the Ontario Capital Markets Modernization Taskforce (the Taskforce) in its final report of January 2021.¹²

The Taskforce recommended providing the OSC with statutory authorization to designate a dispute resolution service (DRS) with binding decision-making powers. However, it stipulated that the DRS (whether OBSI or otherwise) must have the appropriate governance, transparency, and professionalism standards in place as a pre-requisite, with its administrative practices satisfying quasi-judicial standards regarding procedural fairness (including a right of appeal) that are fitting of a body that has binding authority.

While we are open to the idea of a DRS with binding authority, our members have reported that they have had very challenging dealings with OBSI in its current form. Their concerns relate to a sentiment that the existing OBSI process is not fair to all participants and does not adequately consider all evidence, and the adjudicator is apt to substitute its own *ex-post* judgment to a scenario. If the CSA ultimately decides to grant OBSI binding authority, the gravity of that responsibility demands that OBSI first undertake the necessary reforms in accordance with the Taskforce's expectations.

3. CONCLUSION

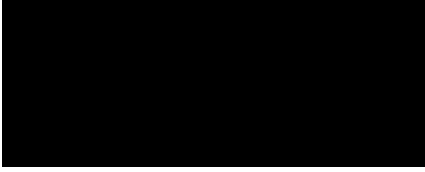
We thank the CSA for its leadership in proposing a merger of the SROs – this is clearly not an easy effort, but the right one to modernize the regulatory landscape. The proposal addresses many of the challenges arising from the current framework. However, we believe that the CSA can strengthen its proposal by addressing outstanding concerns related to financial advice and its evolving role into a profession. We continue to advocate for a regulatory framework that takes a client-centric approach and moves away from a product-based focus.

We look forward to further productive discussions with the CSA on the issues highlighted in this submission. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Legal and Regulatory Affairs at [REDACTED].

¹² Ontario Capital Markets Modernization Taskforce, "Final Report" (January 2021). At: files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf



Sincerely,



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