

May 5, 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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Care of:

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

M^e Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec City, Québec G1V 5C1
consultation-en-cours@lautorite.qc.ca

SENT VIA EMAIL

Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators Notice and Request for Comment
Proposed Amendments to NI 33-109 and Related Instruments
*Modernizing Registration Information Requirements, Clarifying Outside Activity
Reporting & Updating Filing Deadlines***

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments on the Canadian Securities Administrators' (CSA) proposed amendments to NI 33-109 and Related Instruments *Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines*.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, tax planning, employee benefits, life insurance, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

2. OUR COMMENTS

EXECUTIVE SUMMARY

Advocis commends the CSA for acting to reduce regulatory burden and provide greater clarity with respect to registration information and outside business activities (now "outside activities"). We feel that the changes to reporting deadlines and registration information requirements are likely to reduce the regulatory burden on dealers and individual advisors, and we are in strong support of the CSA beginning to collect title information from registered individuals.

In particular, Advocis is encouraged by the CSA's proposed amendments to the reporting requirements around outside activities. We feel that the changes add clarity and balance to the reporting regime, and particularly feel that the extension of the reporting deadline to 30 days, from 10, is an appropriate and necessary change. While we have some recommendations and have highlighted some areas where we would like to see additional clarification, the categories

provide a relatively straightforward way for individuals to identify whether they are engaged in outside activities that should be reported to the regulator.

In addition to reducing the regulatory burden for registrants, we see an additional benefit. Specifically, narrowing the categories of outside activity disclosure and focusing on the types of activities that are most indicative of risk will enhance the ability of the outside activities reporting regime to achieve its underlying intended outcome: enhancing consumer protection by ensuring a registrant's fitness for registration.

A. OUTSIDE ACTIVITIES AND POSITIONS OF INFLUENCE

Outside activities that are no longer reportable

We appreciate that many non-compensable activities will no longer need to be reported to the regulator. Financial advisors are often dedicated and involved members of their communities, and we feel that it is appropriate that many volunteer roles, such as coaching amateur sports leagues, will not lead to a reporting obligation.

However, there are some types of non-compensable activity that we feel should be added to the category of outside activities that are no longer reportable. As trusted financial professionals, many advisors are called upon to serve as treasurers, board members and leaders within local chambers of commerce or similar community groups. While these types of activities may be reportable under Category 4 (Provision of Financial Services or Financial-Related Services) or Category 6 (Specified Activities), we question whether these should nonetheless be no longer reportable.

In our opinion, advisors should be encouraged to take on volunteer roles within their community that make use of their training, qualifications and financial expertise. Many boards and chambers of commerce have bylaws surrounding conflicts of interest. Also, while advisors may have access to a non-profit or charity's books, these are often also overseen by staff and volunteers of the organization. Involvement with actual securities or other financial products is rare, and in these circumstances, we would still expect the activities to be reportable.

We recommend that the CSA consider whether it is possible to limit which non-compensable outside activities are reportable to those that are most likely to give rise to a potential conflict of interest. While we recognize that the requirement to report these activities is not a prohibition, our members note that dealers are sometimes reluctant to permit their employees to engage in outside activities that would be reportable. We feel that from a public policy perspective, there is a benefit to encouraging financial professionals to take on community

roles that are complementary to their existing knowledge and expertise. Ideally, we believe that they should be able to do so with a minimum of regulatory burden.

Positions of Influence (Category 5)

We appreciate that the CSA has taken steps to clarify when an individual is considered to be in a position of influence. In our view, the inclusion of “a leader in a religious or similar organization” could benefit from some additional context and clarity about which specific roles and activities would meet this standard. We wish to ensure that advisors can fully participate in their faith and similar communities without attracting additional regulatory burden unless warranted by the risk.

It seems appropriate that members of a given clergy or order who regularly lead religious services or provide religious counselling should be included. However, we are concerned that, as drafted, this category could also include those who take on less influential leadership roles within the organization such as hosting a religious study group, chaperoning a youth group or teaching children core tenets and values of religion. Some of these roles may have duties and responsibilities within the faith community that extend beyond the clerical and administrative duties contemplated in the guidance within 31-103CP, and additional clarification of how these activities should be classified would be helpful.

Advocis is in favour of codifying the expectations around positions of influence, replacing the current existing case-by-case practice of imposing restricted client terms and conditions on individuals’ registrations. However, we encourage the CSA to consider alternative approaches to entirely prohibiting individuals in positions of influence from providing any financial-related services to individuals that they know through that position or their family members. In our opinion, this is unduly restrictive.

Many positions of influence are professions that have their own high, strict standards of professional conduct overseen by their own regulatory bodies. Individuals participate in ongoing education, including in areas of professional responsibility and ethics. While these details enhance the potential influence of the individual in question, they are also positive factors that should serve to mitigate the risk of harm occurring. Further, many of the listed professions would already have a fiduciary duty by nature of their position of influence, such as doctor/patient, lawyer/client and priest/parishioner. We view this as an additional protective factor that mitigates the potential abuse of a position of influence.

The core concern rests in registrants leveraging their position of influence to advance registrable activities in a conflict of interest. However, conflicts of interest are also addressed by the forthcoming client-focused reforms (CFRs), scheduled to come into effect in June 2021. We feel that the robust conflict of interest control and mitigation requirements in the CFRs



significantly address the concerns inherent with positions of influence and the prohibition as contemplated in the outside activity reporting regime is unnecessarily burdensome.

In our view, it would be more appropriate to focus on whether the individual in a position of influence is using that position to solicit business. Distinguishing between solicited and unsolicited business would mitigate the greatest risk of harm, while still allowing investors to elect to work with advisors who have earned their trust and regard from other professional work. While an approach distinguishing between solicited and unsolicited business may require additional oversight from dealers, we feel that it will also allow greater investor choice and ensure that client accounts are serviced by the best qualified individual. We feel that this is particularly helpful for smaller dealers, as well as in rural and remote areas where advisors may be more likely to also serve other roles within the community.

We also believe that this approach may offer advantages from a regulatory and enforcement perspective. The solicitation of business seems objectively simpler to prove and to correlate more directly with the risk of an individual abusing their position of influence than measures such as looking at the client's "susceptibility." Susceptibility appears to primarily be a proxy for vulnerability, and where it exists, we expect that it is more likely to give rise to a fiduciary duty between the advisor and their client. In our opinion, the conflict of interest rules under the CFRs and the application of a context-sensitive fiduciary duty would better address concerns regarding positions of influence than restricting clients from unsolicited business with an individual who has already earned their trust.

Specified Activities (Category 6)

Advocis is also generally supportive of the use of a cumulative minimum threshold in determining which specified activities outside of an individual's sponsoring firm are reportable as part of Category 6. In our view, it is reasonable to expect individual advisors to report activities when those activities could interfere with their ability to properly carry out registrable functions.

Although many individual advisors work for their sponsoring firm on a full-time basis, some may need to supplement their earnings with outside work, especially at the beginning of their careers and during times of economic difficulty. We feel that these advisors should be supported where reasonable, especially as we strive to enhance diversity in the finance industry.

We are also concerned that this category may disproportionately capture advisors in rural and remote areas, where business in the registrable activity may be more limited. We want to ensure that rural and remote communities are able to access competent, qualified financial

advice, which is more challenging if advisors cannot supplement their registration-related income with external work.

While we recognize the value of a metric that captures increased risk within this category of advisors, we feel that absent specific data tying this risk to a threshold of 30 hours per month, the proposed threshold is too low. Based on feedback from our membership, a threshold of 50 hours per month would be more appropriate. This would reflect less than two 7.5 hour shifts per week, which can certainly be accommodated on weekends and outside of the traditional workweek, limiting the likelihood that such activities would interfere with work connected to registrable activities.

B. COLLECTING INFORMATION ON PROFESSIONAL TITLES

Advocis strongly supports collecting information on professional titles. We believe that it is essential that titles reflect the services that an individual is appropriately qualified to provide. We encourage the CSA to lend their support to jurisdictions that are implementing title protection initiatives within the financial services sector, such as Ontario and Saskatchewan. In the current regulatory landscape, titles are one of the few consumer-facing indicators of expertise. We have stated for many years that restrictions surrounding the use of titles is overdue, simply for the fact that consumers believe that these titles are already protected and are meaningful proxies of the user's skills, education and experience.¹

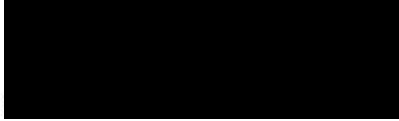
With initiatives to regulate the titles of "financial advisor" and "financial planner", we see a significant opportunity to strengthen professionalism and modernize financial services delivery by aligning regulatory reality with consumer beliefs and expectations. We believe that title protection is a meaningful way to reduce consumer confusion and ensure that investors are accessing advice from professionals with appropriate credentials, especially as consumers believe that these titles are already protected and are meaningful proxies of the user's skills, education and experience. In our view, title protection aligns with the CSA's goal of ensuring that investors are served by individuals whose titles match the services that they are qualified to provide.

We look forward to working with the CSA as it continues to modernize outside activity reporting, update registration information requirements and revise filing deadlines. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Legal and Regulatory Affairs at 416-342-9849 or jryu@advocis.ca.

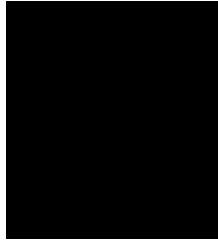
¹ For example, Advocis commissioned polls in five provinces between October 2018 and March 2019 which found that, on average, half of the respondents believe the title of "financial advisor" is already protected in their province. When informed this was not actually the case, the vast majority of respondents also supported legislation that would make this restriction a reality.



Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors