

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF RULE UNDER THE *INSURANCE ACT*

Rule 2020 – 002 Unfair or Deceptive Acts or Practices Rule

Amendment 1 - Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts

November 25, 2022

Introduction

The Financial Services Regulatory Authority of Ontario (“**FSRA**”) is strengthening Ontario’s regulatory regime (the “**Regime**”) and taking steps to protect customers with respect to deferred sales charges (“**DSC**” or “**DSCs**”) on individual variable insurance contracts (“**IVICs**,” also known as individual segregated fund contracts).

FSRA is proposing two amendments (the “**Amendments**”) to the Unfair or Deceptive Acts or Practices Rule (the “**UDAP Rule**”) ¹ under the *Insurance Act* (the “**Act**”). The Amendments would implement a principles-based and outcomes-focused approach to limit undesirable customer outcomes related to DSCs.

- This Notice of Rule discusses the first amendment, which is in Appendix A (the “**First Proposed Amendment**”).
 - The First Proposed Amendment would address new IVICs issued on or after June 1, 2023 and changes to existing IVICs to add DSC sales charge options to them.
 - It aims to harmonize the Regime with other Canadian jurisdictions by implementing an enforceable ban on using DSCs for IVICs issued on or after June 1, 2023.
 - It aims to harmonize the Regime with the DSC ban in place for mutual funds, to the extent it is practical and appropriate to do so.
- The Notice of Rule for the second amendment can be found here: [Amendment 2 – Deferred Sales Charges – All Individual Variable Insurance Contracts \(the “Second Proposed Amendment”\)](#).
- The Second Proposed Amendment would implement additional customer protection measures in relation to future deposits made on a DSC basis to IVICs issued prior to June 1, 2023.

As required by s. 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”), FSRA is publishing the First Proposed Amendment for

¹ Rule 2020 – 002 Unfair or Deceptive Acts or Practices.

comment on its website. Stakeholders can make written comments on the First Proposed Amendment within 90 days after the First Proposed Amendment's publication. FSRA will publish stakeholder comments on its website.

Stakeholders can submit comments for the First Proposed Amendment and the Second Proposed Amendment either separately or together. To make it easier to review the effects of these Proposed Amendments:

- a blacklined copy of the UDAP Rule that shows the changes proposed under the two Rules together is attached as Appendix B; and
- a flow chart that shows how the changes will affect contracts that exist when the Proposed Amendments take effect is attached as Appendix C..

Background

On February 10, 2022, the Canadian Council of Insurance Regulators (“**CCIR**”) and Canadian Insurance Services Regulatory Organizations (“**CISRO**”) (collectively the “**Insurance Regulators**”) announced that due to the high risk of poor consumer outcomes associated with DSCs in the sale of IVICs, insurers should refrain from engaging in new DSC sales and that a transition to the cessation of such sales is expected by June 1, 2023. The First Proposed Amendment would ban sales of new individual segregated fund contracts with DSCs effective June 1, 2023. This would implement the national position announced by all insurance regulators across Canada on February 10, 2022.

The First Proposed Amendment would be made under the authority granted by clause (67) of s. 121.0.1(1) of the Act (the “**UDAP Rulemaking Power**”). The First Proposed Amendment would specify that it is an unfair or deceptive act or practice (“**UDAP**”) to do or fail to do anything that results, or could reasonably be expected to result, in an insurer, on or after June 1, 2023:

- issuing an IVIC under which anyone can make an investment that may be subject to a DSC; or
- changing an IVIC to add a DSC sales charge option, or to make an existing DSC less favourable to a customer (the “**Prohibited Outcomes**”).

The First Proposed Amendment is consistent with FSRA's short-term priorities. As described in FSRA's most recent Annual Business Plan,² one of FSRA's planned outcomes for this fiscal year is to ensure consumers are treated fairly by ensuring the industry has a clear understanding of FSRA's regulatory expectations with respect to the sale and administration of IVICs. The First Proposed Amendment and the Prohibited Outcomes would help to achieve this goal by protecting customers from undesirable DSC-related outcomes by prohibiting DSCs on new IVICs and the addition of DSCs to existing IVICs. It would also clarify that the prohibition on DSCs on new IVICs would not apply to situations where an existing DSC carries forward from one contract to another,

² FSRA Annual Business Plan, 2022-2025, p. 41.

such as where a registered retirement savings plan (RRSP) is replaced with a registered retirement income fund (RRIF).

The First Proposed Amendment also aligns with FSRA's statutory objects, which include FSRA's duties to:

- regulate and generally supervise the regulated sectors;
- contribute to public confidence in the regulated sectors;
- promote high standards of business conduct;
- cooperate and collaborate with other regulators where appropriate;
- protect the rights and interests of consumers; and
- foster strong, sustainable, competitive and innovative financial services sectors.

FSRA expects the First Proposed Amendment to come into force on June 1, 2023, subject to the Minister of Finance's (the "**Minister**") approval.

Substance and Purpose of the First Proposed Amendment

i. Purpose

The First Proposed Amendment would better protect the rights and interests of consumers and promote high standards of business conduct. By prohibiting an insurer from issuing IVICs with DSCs on or after June 1, 2023, it aims to limit undesirable customer outcomes connected with DSCs, including unsuitable advice and unexpected fees. By limiting undesirable customer outcomes, the First Proposed Amendment would protect the rights and interests of consumers, while promoting high standards of business conduct.

The Insurance Regulators announced that a transition to the cessation of DSC sales is expected by June 1, 2023. In light of this expectation, another purpose of the First Proposed Amendment is to harmonize with this national position by implementing an enforceable prohibition on using DSCs for IVICs issued in Ontario on or after June 1, 2023.

The Insurance Regulators' announcement followed a similar announcement by securities regulators across Canada, which had the effect of banning new DSC sales of mutual funds on or after June 1, 2022. A further purpose of the First Proposed Amendment is to harmonize with securities law on this point, to the extent it is both practical and appropriate to do so, in light of certain similar characteristics between IVICs and mutual funds.

The First Proposed Amendment provides timely clarity to industry on the treatment of DSCs in the Regime. FSRA understands that there has been some confusion on the treatment of DSCs in the Regime. The First Proposed Amendment provides needed clarification to industry by:

- imposing a clear prohibition on the use of DSCs for IVICs issued on or after June 1, 2023;
- imposing a clear prohibition on changing IVICs to add DSCs or make DSCs less favourable to customers; and
- confirming that an insurer would not be considered to have issued an IVIC where a person has an existing IVIC with an insurer and the insurer issues a replacement IVIC on essentially the same terms. For example, this may occur where a customer converts an RRSP contract to a RRIF contract or transfers ownership of an IVIC.

ii. Substance

The First Proposed Amendment’s substance is to better protect customers by,

- prohibiting insurers from issuing IVICs on or after June 1, 2023, under which a person can make an investment which may be subject to a DSC; and
- prohibiting insurers from changing an IVIC, on or after June 1, 2023, to add a DSC or make a DSC less favourable to a customer.

Summary of First Proposed Amendment

i. Minor Amendments

The First Proposed Amendment would amend ss. 2(1)³ and 2(2)⁴ of the UDAP Rule.

Subsection 2(1) specifies it is a UDAP to do, or fail to do, anything that results in or could reasonably be expected to lead to the prohibited outcomes listed in specified parts of the UDAP Rule. Subsection 2(2) describes the tests used to assess whether an outcome can be reasonably expected. The First Proposed Amendment would amend these sections to include two new parts (the “**Parts**”) that would contain the substance of the updated Rule,

- Part 11: Deferred Sales Charges – New Individual Variable Insurance Contracts; and
- Part 12: Deferred Sales Charges – All Individual Variable Insurance Contracts.

As a result, conduct, including inaction or omission, which results in or could reasonably be expected to result in the outcomes described by the Parts would be prescribed as a UDAP.

³ If approved by the Minister, s. 2(1) would read as follows, “for the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 12 of this Rule is prescribed as an unfair or deceptive act or practice.”

⁴ If approved by the Minister, s. 2(2) would read as follows, “For the purposes of determining what conduct, including inaction or omission, could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 12 of this Rule...”

ii. Definitions

The First Proposed Amendment would amend the UDAP Rule to incorporate the following definitions (the “**Definitions**”),

- **DSC:** means a fee or charge,
 - an owner is required to pay because the owner engages in an action listed in the definition (e.g., withdraws money from a segregated fund), and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or impacted by the change, and/or of the original cost of the units redeemed or impacted by the change, according to a pre-determined calculation or schedule;
 - an owner is required to pay because the owner did not make payments when required under an IVIC;
 - an owner is required to pay that is described in an IVIC by a listed term (e.g., “deferred sales charge” or “low-load sales charge”) or a term substantially similar to any listed term; or
 - a reasonable insurer would consider to be a DSC;
- **DSC (Exclusions):** The definition of DSC does not include a fee or charge that an owner must pay when they deposit money to an IVIC (“front-end load”) or a fee or charge that an owner must pay because the owner moves money amongst investment options within the IVIC more often than the IVIC permits without charge (“frequent trading fee”). As well, the definition of DSC does not include a short-term trading fee or a market value adjustment that an owner is required to pay that is calculated based on changes in interest rates;
- **IVIC:** means an individual contract of life insurance under which the insurer’s liabilities vary in amount depending upon the market value of a group of assets held in a segregated fund, and includes any provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund;
- **Person:** means a person as defined for s. 438 of the Act, and includes an individual, corporation, association, partnership, or organization, among others; and
- **Segregated fund:** means a specified group of assets held in a separate and distinct fund as defined by s. 1(1) of O. Reg. 132/97.

Note that the Second Proposed Amendment uses the word “insured” rather than “owner” but under Part V of the Act, which governs IVICs, the word “insured” means the person who owns the contract.⁵

iii. Prohibited Outcomes

The First Proposed Amendment would amend the UDAP Rule to prohibit the following outcomes,

⁵ See, e.g., ss. 171(1) “insured”, 199(1)(b), 199(2) and 200(3) of the *Insurance Act*.

- an insurer issuing an IVIC on or after June 1, 2023, under which a person can invest money which may be subject to a DSC;
- an insurer amending an IVIC, on or after June 1, 2023, to permit or require payment of a DSC (i.e. to make a DSC available as a sales charge option under an IVIC, whether the contract was issued before, on or after June 1, 2023); and
- an insurer amending an IVIC, on or after June 1, 2023, so that a DSC becomes less favourable to an owner. This includes changes to an IVIC that increase the amount of an investment which may be subject to a DSC, increase the duration of a DSC, increase the amount due under a DSC, or extend the circumstances that trigger payment of a DSC.

The new Part 11 would also clarify situations when an insurer is not considered to have “issued” an IVIC. In particular, the First Proposed Amendment would not consider an insurer to have “issued” an IVIC where a person has an existing IVIC with the insurer and the insurer issues a replacement IVIC on substantially the same terms and conditions, including in relation to the:

- conversion of an RRSP to a RRIF;
- conversion of a locked-in retirement account to a life income fund contract; or
- transferring ownership of an IVIC.

Authority for the Proposed Amendment

Subsection 21(1) of the FSRA Act allows FSRA to make rules in respect of any matter over which a statute provides FSRA with rulemaking authority. As the Act contains the UDAP Rulemaking Power, FSRA is authorized to prescribe the Prohibited Outcomes as a UDAP, and to include the Definitions in the First Proposed Amendment.

The UDAP Rulemaking Power provides FSRA with authority to make a rule prescribing any activity or failure to act as a UDAP and to prescribe requirements that, if not complied with, would constitute a UDAP. Pursuant to the UDAP Rulemaking Power, FSRA has the authority to prescribe the Prohibited Outcomes as a UDAP, and to include the Definitions in the First Proposed Amendment.

Unpublished Materials

FSRA has not relied on any significant unpublished study, report, decision or other written material.

Alternatives Considered

As noted in the Introduction, FSRA is currently proposing the Amendments to the UDAP Rule to address DSCs. The First Proposed Amendment discussed in this Notice of Rule would prohibit insurers from issuing new IVICs with DSCs on or after June 1, 2023. The

Second Proposed Amendment would introduce customer protections in relation to making new deposits to IVICs on a DSC basis on or after June 1, 2023.

FSRA has considered the following alternatives to this approach.

1. Combine First Proposed Amendment and Second Proposed Amendment

FSRA considered proposing the First Proposed Amendment and Second Proposed Amendment in a single document that would amend the UDAP Rule. This approach would ultimately achieve the same purpose.

However, FSRA has divided the Rule into two parts to allow stakeholders to review: (1) the effects of the changes that prohibit new DSCs and changes to increase the scope of DSCs and (2) the effects of the changes on new deposits to existing contracts that already have DSCs on them. This may facilitate future consultations and rule-making if it is necessary to consult on one of these amendments in the future but not the other, or to consult on them at separate times.

For this reason, FSRA has chosen to propose the First Proposed Amendment and Second Proposed Amendment separately.

2. Rule – Ban new DSC deposits on all contracts

FSRA considered proposing a Rule that would ban all deposits on a DSC basis on or after June 1, 2023, under both new and existing IVICs.

FSRA decided against adopting this approach because it would be an extraordinary interference with existing contracts, and it could lead to unexpected customer harm. DSCs might also be suitable for customers making further deposits to a pre-existing contract if it has benefits that are no longer available under new contracts, even if the contract only allows deposits on a DSC basis.

Prohibiting all deposits on a DSC basis would remove a contractual right that some customers benefit from, and that some have deliberately sought and obtained. For these reasons, FSRA has decided not to adopt this approach.

3. Rule – Ban insurers from charging money under DSCs

FSRA considered proposing a Rule that would prohibit insurers from charging DSCs on or after June 1, 2023, when the contract otherwise specifies a DSC is payable. This Rule could apply to all deposits regardless of when they were made, or just to deposits made on or after June 1, 2023. Customers would immediately benefit from the change, potentially even on deposits made before the Rule's effective date. The Rule would not prohibit customers from continuing to make deposits to their contracts even if the only sales charge option under the contract is DSC. Therefore, customers would still

experience the benefits associated with those contracts, including better guarantees than might otherwise be available.

However, if the Rule applied to deposits made prior to June 1, 2023, this approach would go further than the ban on DSCs for mutual funds. The securities regulators have allowed fund organizations to charge DSCs when customers redeem mutual fund units during the DSC period, assuming the units were purchased before the ban took effect, even if the redemption occurs after the effective date of the ban. To impose this ban for IVICs would be contrary to the purpose of the First Proposed Amendment, which is intended to harmonize the insurance sector DSC ban with the DSC ban in place for mutual funds, to the extent it is practical and appropriate to do so.

Banning insurers from charging money on IVICs where customers made deposits on a DSC basis would also require the insurers to absorb the costs that DSCs were intended to fund.

For these reasons, FSRA decided against adopting this approach.

4. Rule – Ban DSCs on new contracts only

FSRA considered banning DSCs on new contracts only and not addressing further DSC deposits to existing contracts. However, this approach would not immediately mitigate DSC-related risks for future deposits on existing contracts.

For this reason, FSRA decided to take a two-pronged approach, addressing new contracts and future deposits to existing contracts in two separate amendments. This approach will maximize the likelihood that Ontario will have a binding ban on new IVICs with DSCs in effect by June 1, 2023, while mitigating the risks to customers with respect to existing contracts through the Second Proposed Amendment.

5. Rule under Segregated Fund Rule-making Power

FSRA is proposing to implement the DSC ban under the UDAP Rulemaking Power, but also considered using the Act's rule-making power with respect to variable insurance contracts. This power is described in amendments to the Act that received Royal Assent in Fall 2021 and would allow FSRA to propose rules with respect to the design, marketing, sale, issuance and administration of variable insurance contracts (the "**Segregated Fund Rule-making Power**").⁶ However, these amendments have not yet been proclaimed into force. In light of FSRA's goal of having the DSC ban for new contracts in effect by June 1, 2023, FSRA is proposing to use the existing UDAP Rulemaking Power, rather than delaying until the Segregated Fund Rule-making power is proclaimed into force.

⁶ 2021, c. 40, Sched. 14, s. 2 introduced clause (11.1) of s. 121.0.1(1) 11.1 to the *Insurance Act*.

6. Guidance

FSRA considered implementing the DSC ban by using guidance that interprets existing legislation or otherwise establishes FSRA's internal practices and procedures with respect to DSCs. However, FSRA intends to create requirements that will clearly and certainly have legal effectiveness and enforceability.

For this reason, FSRA is proposing Rules instead of Guidance.

7. Status quo (no action)

As always, FSRA evaluated whether regulatory action is required. However, in light of the risks DSCs pose to consumers, as announced by the Insurance Regulators in February 2022, FSRA did not consider this to be an appropriate response. Furthermore, FSRA has a duty to fulfill its statutory objects, including regulatory cooperation and collaboration.

Anticipated Costs and Benefits

Costs

Insurers would incur costs to comply with the First Proposed Amendment if they currently sell IVICs that offer DSC as a sales charge option. These costs may include costs associated with:

- updating standard form IVICs, information folders, Fund Facts documents, marketing materials, and websites;
- updating systems to reflect the new sales charge options for future sales; and
- creating job aids and training for staff and agents on the changes to IVICs that will be available for future sales.

Agents who currently recommend DSCs might need to spend time familiarizing themselves with other sales charge options available for future sales.

FSRA staff would need time to implement the First Proposed Amendment, including reviewing IVICs, information folders and Fund Facts documents as required under Ontario Regulation 132/97: Variable Insurance Contracts (the "**IVIC Regulation**"). FSRA currently receives approximately 70 submissions per year for these purposes, and insurers may be able to update some of these documents to address the First Proposed Amendment as part of their normal review cycle for applicable documents. However, if all insurers submit updated documents at the same time, FSRA may need additional resources to complete its reviews within the 30 days permitted under the IVIC Regulation.

Some customers may pay more to invest in IVICs under the First Proposed Amendment, when compared to what would be paid if the First Proposed Amendment is

not approved. Customers who choose a DSC for their investments and who do not withdraw money during the DSC period currently pay nothing as a sales charge. Depending on what sales charge options insurers offer in place of DSCs, customers may be required to pay for costs associated with the sale of their contracts.

The risk of higher sales costs to customers may be mitigated to the extent that insurers offer the Advisor Chargeback sales charge option for future sales. Under this option, the insurer typically pays an agent compensation when a customer buys or makes a deposit to an IVIC. If the customer withdraws money within a specified time, the agent is required to repay all or part of the compensation to the insurer. The customer is not required to pay any amount directly for the sales charge.

Benefits

If approved, the First Proposed Amendment would have the following benefits:

- Harmonize obligations for new IVIC sales with new mutual fund sales to avoid regulatory arbitrage across products;
- Harmonize obligations for new IVIC sales nationally, to simplify compliance for insurance companies and national insurance agencies;
- Promote ongoing collaboration with other regulators;
- Protect customers by removing the conflict of interest that agents currently experience regarding DSCs, which are typically associated with high upfront compensation that can motivate agents to recommend DSCs for customers even when DSCs are not a suitable sales charge option;
- Foster a strong, sustainable, competitive and innovative life and health insurance sector by incentivizing agents to sell IVICs that align with customers' long-term financial goals;
- Increase public confidence in the insurance sector by increasing customer confidence that their financial interests will be protected when purchasing IVICs;
- Prevent customers from investing in new contracts on a DSC basis when that sales charge option is not suitable for them;
- Motivate insurers to focus more on the quality of their products to attract customers than on compensation to agents who sell them (thereby potentially reducing costs that are passed along to customers who invest in IVICs);
- Avoid customer surprise about fees payable on withdrawal from their IVICs; and
- Reduce customer complaints.

Overall, the First Proposed Amendment would increase the likelihood that customers will be treated fairly with respect to their individual segregated fund contracts, while creating clear and simple obligations for insurers and agents.

Recommendations to the Minister

FSRA will recommend that a consequential amendment be made to s. 12(1) of Ontario Regulation 347/04: Agents to include the following language:

“Act, the regulations, the agent’s licence and Authority rules.”

FSRA will also recommend that consequential amendments be made to Ontario Regulation 408/12: Administrative Penalties (the “**AMP Regulation**”), so that the Prohibited Outcomes are subject to administrative monetary penalties.

Proposed Amendment

Please refer to Appendix A for the full text of the First Proposed Amendment.

Appendix A

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

RULE 2020 – 002

Unfair or Deceptive Acts or Practices

**Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual
Variable Insurance Contracts**

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
RULE 2020 – 002
Unfair or Deceptive Acts or Practices

Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts

1. Rule 2020 – 002 Unfair or Deceptive Acts or Practices (the “**UDAP Rule**”) is amended by this Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts (the “**Amendment**”).
2. S. 1(1) of the UDAP Rule is amended,
 - (a) By adding the following paragraph,
 - (vii.1) “Deferred sales charge” means,
 - (i) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured,
 - (a) makes a withdrawal from a segregated fund, or
 - (b) changes the sales charge option that applies to any investment in a segregated fund under the individual variable insurance contract,and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or affected by the change, and/or the original cost of the units redeemed or affected by the change, according to a predetermined calculation or schedule set out in the individual variable insurance contract,
 - (ii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured does not make payments when required under the individual variable insurance contract,
 - (iii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay that is described in the individual variable insurance contract by one of the following terms, or a term substantially similar to any of these terms,
 - (a) deferred sales charge, DSC, DSC sales charge, DSC charge, DSC fee,

(b) low-load sales charge, low-load charge, low-load fee, low sales charge, or

(c) back-end sales charge, back-end load, back-end charge, back-end fee, or

(iv) any fee or charge a reasonable insurer would consider to be a deferred sales charge,

provided however and despite the foregoing, a deferred sales charge does not include,

(a) a fee or charge the insured is only required to pay at the time they deposit funds to the individual variable insurance contract,

(b) a fee or charge the insured is required to pay because the insured moves money among investment options within the individual variable insurance contract more often than the individual variable insurance contract permits without charge,

(c) a short term trading fee the insured is required to pay if the insured withdraws money from the individual variable insurance contract, or moves money among investment options within the individual variable insurance contract, within 90 days of investing the money, or

(d) a market value adjustment the insured is required to pay that is calculated based on changes in interest rates, but not based on compensation an agent received with respect to the investment,

(b) By adding the following paragraph,

(vii.2) "Individual variable insurance contract" means an individual contract of life insurance under which the insurer's liabilities vary in amount depending upon the market value of a specified group of assets in a segregated fund. Individual variable insurance contract includes a provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund,

(c) By adding the following paragraph,

(vii.3) "Person" has the meaning ascribed to such term in s. 438 of the Act,

(d) By adding the following paragraph,

(x.1) “Segregated fund” has the meaning ascribed to such term in s. 1(1) of O. Reg. 132/97: VARIABLE INSURANCE CONTRACTS,

(e) By repealing s. 2(1) and replacing it with the following,

2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 12 of this Rule is prescribed as an unfair or deceptive act or practice.

(f) By repealing s. 2(2) and replacing it with the following,

2(2) For the purposes of determining what conduct, including inaction or omission, could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 12 of this Rule,

(i) if the action or conduct, including inaction or omission is committed by,

(a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or

(b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person’s business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

(ii) if the action or conduct, including inaction or omission, is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person’s position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.

3. The UDAP Rule is amended by adding the following parts:

11 Deferred Sales Charges – New Individual Variable Insurance Contracts

- 11(1) An insurer issuing an individual variable insurance contract on or after June 1, 2023, under which a person can make an investment that may be subject to a deferred sales charge.
- 11(2) For the purposes of s. 11(1) of this Rule, an insurer is not considered to “issue” an individual variable insurance contract where a person has an existing individual variable insurance contract with the insurer and the insurer issues a replacement individual variable insurance contract on the same terms and conditions, except any changes required by applicable tax or pension laws, including issuing a contract in connection with,
- (i) converting a registered retirement savings plan to a registered retirement income fund contract,
 - (ii) converting a locked-in retirement account to a life income fund contract, or
 - (iii) transferring ownership of the individual variable insurance contract.

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

- 12(1) An insurer amending an individual variable insurance contract, or exercising a right under an individual variable insurance contract, to add, withdraw or change a sales charge option on or after June 1, 2023, if, as a result,
- (i) the individual variable insurance contract may permit or require an insured to pay a deferred sales charge, or
 - (ii) a reasonable person would believe a deferred sales charge under the individual variable insurance contract becomes less favourable to the insured, including any change that,
 - (a) increases the amount of the investment which is or may be subject to a deferred sales charge,
 - (b) increases the duration of a deferred sales charge,
 - (c) increases the amount payable in any given circumstances under a deferred sales charge, or
 - (d) extends the circumstances that trigger payment of a deferred sales charge.

4. The UDAP Rule is amended by re-numbering:

- (a) Part 11 as Part 13; and
- (b) the sections in Part 13 in accordance with the amendment in clause 4(a).

5. This Amendment will come into force,

- (i) 15 days after being approved by the Minister, or
- (ii) in accordance with s. 24(2)(b) of the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8, as applicable, if the Minister does not accept such subsections, reject such subsections or return such subsections to the Authority for further consideration.

Appendix B

Unfair or Deceptive Acts or Practices – Blacklined with DSC Rule Changes

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,
- (iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf,
- (iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
- (v) “Contract of insurance” means,
 - (a) for a contract of life insurance, has the meaning ascribed to such term in s. 171(1) of the Act,
 - (b) for a contract of accident and sickness insurance, has the meaning ascribed to such term in s. 290 of the Act, and
 - (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,
- (vi) “Credit information” means information about a person’s creditworthiness, including a person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,
- (vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

(vii.1) “Deferred sales charge” means,

(i) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured,

(a) makes a withdrawal from a segregated fund, or

(b) changes the sales charge option that applies to any investment in a segregated fund under the individual variable insurance contract,

and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or affected by the change, and/or the original cost of the units redeemed or affected by the change, according to a predetermined calculation or schedule set out in the individual variable insurance contract,

(ii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured does not make payments when required under the individual variable insurance contract,

(iii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay that is described in the individual variable insurance contract by one of the following terms, or a term substantially similar to any of these terms,

(a) deferred sales charge, DSC, DSC sales charge, DSC charge, DSC fee,

(b) low-load sales charge, low-load charge, low-load fee, low sales charge,
or

(c) back-end sales charge, back-end load, back-end charge, back-end fee,
or

(iv) any fee or charge a reasonable insurer would consider to be a deferred sales charge,

provided however and despite the foregoing, a deferred sales charge does not include,

(a) a fee or charge the insured is only required to pay at the time they deposit funds to the individual variable insurance contract,

(b) a fee or charge the insured is required to pay because the insured moves money among investment options within the individual variable insurance contract more often than the individual variable insurance contract permits without charge,

(c) a short term trading fee the insured is required to pay if the insured withdraws money from the individual variable insurance contract, or moves money among investment options within the individual variable insurance contract, within 90 days of investing the money, or

(d) a market value adjustment the insured is required to pay that is calculated based on changes in interest rates, but not based on compensation an agent received with respect to the investment,

(vii.2) "Individual variable insurance contract" means an individual contract of life insurance under which the insurer's liabilities vary in amount depending upon the market value of a specified group of assets in a segregated fund. Individual variable insurance contract includes a provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund,

(vii.3) "Person" has the meaning ascribed to such term in s. 438 of the Act,

(viii) "Prohibited factor" means,

(a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,

(b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or

(c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

(ix) "Reasonable person" means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

(x) "Schedule" means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are active claims,

(x.1) "Segregated fund" has the meaning ascribed to such term in s. 1(1) of O. Reg. 132/97: VARIABLE INSURANCE CONTRACTS,

(xi) "Substantially deficient" means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole

of the goods or services was unfit for the purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of those goods or services,

- (xii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of those goods or services, would not charge or seek, or would not expect a reasonable person who is in the position of the recipient of the goods or services, to accept.
- 1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.
 - 1(3) For greater clarity, in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate to that insurer’s nature, size, complexity, operations and risk profile.
 - 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or authorized representative,
 - (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person, or
 - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
 - 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the purposes of determining what conduct, including inaction or omission, could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule,

- (i) if the action or conduct, including inaction or omission is committed by,
 - (a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or
 - (b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

- (ii) if the action or conduct, including inaction or omission, is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.

- 2(3) S. 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in s. 6 of this Rule.

3 Non-Compliance with Law

- 3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.
- 3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.
- 3(3) Non-compliance with any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

- 4(1) Any unlawful or unfair discrimination, including any contravention of the Ontario *Human Rights Code*, in the provision or administration of insurance, or goods or services related to insurance, including,

- (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
- (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

- 5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,
- (i) treating a claimant in an arbitrary, capricious or malicious manner,
 - (ii) not acting in good faith,
 - (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,
 - (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
 - (v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or
 - (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.
- 5(2) With respect to automobile insurance,
- (i) non-compliance with the Schedule, including but not limited to,
 - (a) payment for goods or services not being made, or
 - (b) the cost of an assessment not being paid,

without reasonable cause, within the time period prescribed in the Schedule,
 - (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or

- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

- 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.
- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.
- 6(4) With respect to automobile insurance, a claimant signing or being asked to sign, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a guideline applicable for the purposes of the Schedule.
- 6(5) Information being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person who is in the position of the intended recipient would consider false, misleading or deceptive.

7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
 - (i) as an incentive or inducement for a person to take an action or make a decision relating to an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable action or decision by a reasonable person licensed to sell such an insurance product,
 - (ii) which is otherwise prohibited by law,
 - (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,
 - (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including but not limited to, tied selling or predatory pricing,

- (v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or
 - (vi) if related to automobile insurance, which is based, in whole or in part, on, or is calculated by reference to, prohibited factors.
- 7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule also apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.
- 7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.
- 7(4) For the purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.
- 7(5) For the purposes of this section, a gift or thing of value will not be considered an incentive or inducement if that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

- 8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of such recipient would consider to be inappropriate, inaccurate or misleading, respecting,
- (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
 - (ii) an insurance claim, the claims process or whether a policy provides coverage, or
 - (iii) any comparison of contracts of insurance.
- 8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

9 Prohibited Conduct in Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to,

- (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
 - (ii) using credit information or a prohibited factor,
 - (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
 - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
 - (v) misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is required by law to use,
 - (vi) making the issuance or variation of a policy of automobile insurance conditional on an insured having or purchasing another insurance policy,
 - (vii) engaging in unfair discrimination,
 - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
 - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
 - (x) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the automobile insurance contract.
- 9(2) Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than,
- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under s. 227(1) of the Act, or
 - (ii) in accordance with the consent obtained in compliance with applicable privacy laws of the person to whom the information relates.

10 Affiliated Insurers

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to an insured or potential insured, having regard to all of the circumstances, including but not limited to,

- (i) each insurer’s declination grounds,
- (ii) each insurer’s rates and risk classification systems,
- (iii) each insurer’s method of distribution, or
- (iv) whether the insurers only recently became affiliated.

11 Deferred Sales Charges – New Individual Variable Insurance Contracts

11(1) An insurer issuing an individual variable insurance contract on or after June 1, 2023, under which a person can make an investment that may be subject to a deferred sales charge.

11(2) For the purposes of s. 11(1) of this Rule, an insurer is not considered to “issue” an individual variable insurance contract where a person has an existing individual variable insurance contract with the insurer and the insurer issues a replacement individual variable insurance contract on the same terms and conditions, except any changes required by applicable tax or pension laws, including issuing a contract in connection with,

- (i) converting a registered retirement savings plan to a registered retirement income fund contract,
- (ii) converting a locked-in retirement account to a life income fund contract, or
- (iii) transferring ownership of the individual variable insurance contract.

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

12(1) An insurer amending an individual variable insurance contract, or exercising a right under an individual variable insurance contract, to add, withdraw or change a sales charge option on or after June 1, 2023, if, as a result,

- (i) the individual variable insurance contract may permit or require an insured to pay a deferred sales charge, or
- (ii) a reasonable person would believe a deferred sales charge under the individual variable insurance contract becomes less favourable to the insured, including any change that,

(a) increases the amount of the investment which is or may be subject to a deferred sales charge,

(b) increases the duration of a deferred sales charge,

(c) increases the amount payable in any given circumstances under a deferred sales charge, or

(d) extends the circumstances that trigger payment of a deferred sales charge.

12(2) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge if the insurer has the right under the terms of the individual variable insurance contract to remove deferred sales charge as a sales charge option and instead accept deposits under a different sales charge option.

12(3) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023 and applying a sales charge option to the deposit other than a deferred sales charge option, if the insurer and insured had agreed that a deferred sales charge would apply to the deposit, but the insurer has withdrawn the deferred sales charge option for future deposits, unless and before the insurer applies the new sales charge option,

(i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, and which at a minimum includes,

(a) a list of sales charge options the insured may choose among,

(b) a description of how each applicable sales charge option works,

(c) the percentage amount of any initial sales charge under each applicable sales charge option,

(d) a description of the relevant management expense ratios, including,

(i) any different charges for different guarantee options,

(ii) what the management expense ratios include, and

(iii) how management expense ratios affect the insured's returns on their investments, and

(ii) either,

(a) the insured agrees to the new sales charge option applying to the deposit, or

(b) a reasonable time elapses, during which the insured does not notify the insurer of the insured's choice of sales charge option, after the insurer

(i) provides the required disclosure,

(ii) notifies the insured of the default sales charge option, and

(iii) notifies the insured of the time until that default sales charge option will apply.

12(4) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge, unless the insured receives written disclosure from the insurer, before the insurer accepts the deposit, that is reasonably designed to help the insured understand the sales charge options available to them and whether making a deposit on a deferred sales charge basis is suitable for that insured.

4113 Coming into Force

~~41(1)~~13(1) This Rule will come into force on the later of the date that section 1 of Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* comes into force and 15 days after the Rule is approved by the Minister.

Appendix C

Effects of UDAP Rule Amendments on Existing IVICs

