

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 “**Board Approved Amendment 1**”).
2. S. 1(1) of the UDAP Rule is amended,
 - (a) By adding the following paragraph,
 - (vii.1) “Deferred sales charge”
 - (a) 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,
 - (1) makes a withdrawal from a segregated fund, or
 - (2) 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variable insurance contract,and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or affected by the change, and/or the original cost of the units redeemed or affected by the change, according to a predetermined calculation or schedule set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, or
 - (iii) any fee or charge with respect to a segregated fund in an individual variable insurance contract that a reasonable insurer would consider to be a deferred sales charge,

(b) but does not include,

- (i) a fee or charge the insured is only required to pay at the time they deposit funds to the individual variable insurance contract,
- (ii) 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,
- (iii) 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
- (iv) 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 substantially

similar 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.

11(3) A replacement individual variable insurance contract is not substantially similar for the purposes of s. 11(2) of this Rule unless the calculation of each deferred sales charge on investments under the replacement individual variable insurance contract reflects the time the money was invested on a deferred sales charge basis under a replaced individual variable insurance contract, if any, rather than reflecting a period starting from the date on which the replacement individual variable insurance contract is issued.

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 Board Approved Amendment 1 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.