

Ban on Issuing new contracts with Deferred Sales Charges (“DSCs”)

| Comments | Response |
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| <p>The majority of stakeholders generally supported FSRA’s proposal to ban insurers from issuing new individual variable insurance contracts (“IVICs”) that involve DSCs. These stakeholders supported FSRA’s goal of harmonizing this requirement with other provinces’ and minimizing regulatory arbitrage between IVICs and mutual funds.</p> <p>Two agents suggested that concerns associated with DSCs are exaggerated, that DSCs are sometimes appropriate for consumers, and that the compensation associated with DSCs is important to financially support new agents when they enter the industry and begin selling IVICs.</p> <p>Another stakeholder urged FSRA to implement the DSC ban in a simple, transparent and cost-efficient way.</p> | <p>The Financial Services Regulatory Authority of Ontario (“FSRA”) appreciates the support from stakeholders for the ban on new IVIC contracts with DSCs, and FSRA’s goal of harmonizing with other insurance regulators with respect to IVICs and with securities regulators with respect to mutual funds.</p> <p>FSRA appreciates the submission from the stakeholder who suggested DSCs may sometimes be appropriate, and FSRA agrees that there may be instances where DSCs can be used appropriately. However, on balance, FSRA believes the sales charge option more often leads to unfair outcomes for customers. FSRA’s view is that it is important to provide Ontario segregated fund investors with similar protections to those enjoyed by mutual fund investors and segregated fund customers of other provinces and intend to continue work on banning DSCs.</p> |

Ban on amending IVICs to add DSCs or make DSCs more onerous

| Comments | Response |
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| <p>One stakeholder noted, with appreciation, the fact that IVICs will not be amended to add DSCs or to change DSCs to become less favourable to the insured. No other stakeholders commented on this requirement.</p> | <p>FSRA thanks the stakeholder for this comment.</p> |

Definition of Deferred Sales Charge

| Comments | Response |
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| <p>One stakeholder requested changes to the definition of deferred sales charge suggesting:</p> <ol style="list-style-type: none">1. in general, the definition of deferred sales charge should be simplified, taking a principles-based approach; | <ol style="list-style-type: none">1. FSRA thanks the stakeholder for these comments and notes that FSRA takes a principles-based approach to all of its guidance and Rules. However, this does not mean that all requirements will be general and subjective. FSRA believes the intended outcomes are best achieved in this case by applying an objective approach and |

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| <ol style="list-style-type: none"> 2. subsections (ii) and (iii) in the consultation draft of the Rule are redundant and should be deleted; 3. the list of exceptions from the definition should not be exhaustive; 4. DSCs should not be prohibited on insurance products other than IVICs; 5. “more clarity is required about what is intended to be captured by section 1(1)(vii.1)(iv)(d)” with respect to the market value adjustment; and 6. on a related note to 5, clarify the prohibition on DSCs does not prohibit an insurer from applying a market value adjustment when a customer cashes money out of a guaranteed interest annuity (“GIA”) investment option before the end of the GIA’s fixed term, even if the GIA is offered within an IVIC. | <p>regulating how insurers must comply rather than simply stating what outcome they should achieve.</p> <ol style="list-style-type: none"> 2. On further review, FSRA agrees that subsection (iii) of the definition is redundant and should be deleted; this subsection refers to all sales charge options called DSCs, low-load charges, back-end charges or anything similar. <p>However, subsection (ii) refers to a specific type of DSC that may not be addressed by the other parts of the definition of DSC, and FSRA will retain this subsection.</p> <ol style="list-style-type: none"> 3. It is unclear why the list of exceptions to the definition of deferred sale charge should be examples rather than a complete list. To protect consumers, the exceptions listed will be the only ones that apply. 4. FSRA’s intent was always that this Rule would only apply to IVICs. FSRA will update the definition of deferred sales charge to clarify this. Specifically, FSRA will update subsection (iv) of the definition of deferred sales charge to clarify that this subsection only applies to fees or charges with respect to segregated funds in IVICs. With this change, all elements of the definition of deferred sales charges that bring fees within its scope will be clear that they only apply to IVICs. 5. There is no subsection 1(1)(vii.1)(iv)(d) in the consultation draft of the Rule. Subsection (d) is an exception from the entire definition of deferred sales charge, not just the part of the definition laid out in 1(1)(vii.1)(iv). FSRA will renumber the subsections of the definition of deferred sales charge to make this clearer. 6. FSRA agrees that all market participants should have a level playing field with respect to charges associated with guaranteed interest investments. The language of the consultation draft was not intended |
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| | to ban market value adjustments on guaranteed interest investments that are made available through IVICs (outside the segregated funds). FSRA will update the wording in the definition of deferred sales charge to clarify that only fees or charges that relate to money in segregated funds fall under the definition of deferred sales charges under the Rule. |
| Exceptions from prohibition on new IVICs with DSCs | |
| Comments | Response |
| One stakeholder raised a concern about the phrasing of the exception to the prohibition on issuing new IVICs with DSCs. They noted that replacing an IVIC with a new contract should not restart the time period during which the owner will need to pay a DSC if they make a withdrawal. | FSRA agrees that if an owner makes deposits to an IVIC on a DSC basis, and the insurer later issues a replacement contract as described in the draft Rule, the replacement should not restart the DSC period for those deposits. We recognize that the current wording may imply this is not the case, but the Rule was intended to achieve this outcome. FSRA will update the wording of proposed section 11(2) of the UDAP Rule and add a new 11(3) to clarify this point. |
| Effective Date and Implementation Timeline | |
| Comments | Response |
| One stakeholder indicated that although insurers are working to update their products in advance of June 1, 2023, the deadline was quite tight from an operational perspective and that 18 to 24 months should usually be allowed between publishing a final rule and applying it to the industry. Other stakeholders wrote in support of banning DSCs on IVICs effective June 1, 2023, in harmony with other Canadian insurance regulators. | In February 2022, CCIR and CISRO announced that regulators across Canada would work to ban DSCs on segregated fund contracts by June 1, 2023. FSRA appreciates the steps insurers need to complete to comply with the ban in Ontario will depend on the drafting of FSRA's Rule. FSRA will take this into consideration as FSRA moves forward with supervisory efforts. |
| Other Upfront Compensation | |
| Comments | Response |
| A few stakeholders commented on upfront compensation generally; these comments did not relate to DSCs or the subject matter of the proposed Rule. Two stakeholders urged FSRA, in its work with CCIR and CISRO, to consider banning all upfront compensation. | While these comments do not relate to the proposed Rule, FSRA continues to work with other regulatory bodies through CCIR and CISRO on upfront compensation from insurers to agents, other than payments associated with DSCs. The public consultation on the |

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| <p>In contrast, agents noted that customers need advice about IVICs and agents need to be paid for advice. They noted that DSCs previously allowed consumers to access advice even if the consumers could not afford to pay an agent an upfront fee. With the DSC option eliminated, agents urged FSRA to carefully consider any further action that would affect upfront payments to agents.</p> | <p>CCIR/CISRO discussion paper on upfront compensation closed in November 2022. FSRA appreciates the stakeholders' comments with respect to non-DSC upfront compensation, such as advisor chargeback, and will share the comments with other CCIR and CISRO members.</p> <p>FSRA recognizes that agents must be paid for the advice they provide to consumers and notes that insurers will still be able to do so without the DSC option. FSRA will keep the issue of access to advice in mind as FSRA continues to review other types of compensation associated with IVICs.</p> |
| <p>Other</p> | |
| <p>Comments</p> | <p>Response</p> |
| <p>One commenter encouraged FSRA to monitor industry practices before the amendments take effect, to avoid a rush to sell IVICs with DSCs before the Rule takes effect.</p> | <p>FSRA will continue monitoring the use of sales charge options in the sector. FSRA expects insurers and agents to sell customers products that are suitable to their needs.</p> |