

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

Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts

1. Rule 2020 – 002 Unfair or Deceptive Acts or Practices (the “**UDAP Rule**”) is amended by this Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts (the “**Amendment**”).

2. S. 1(1) of the UDAP Rule is amended,

(a) By adding the following paragraph,

(i.1) “Advisor chargeback sales charge option” means any option under an individual variable insurance contract,

(a) in connection with which,

(i) an insurer pays compensation to an agent when the insured invests money in a segregated fund in the individual variable insurance contract, and

(ii) the agent that receives this payment may be required to repay all or part of this compensation to the insurer if, within a specified time, the insured withdraws money from the segregated fund or changes the sales charge option associated with the units in the segregated fund in which the insured invested, or

(b) that a reasonable insurer would consider to be an advisor chargeback sales charge option,

2.3. The UDAP Rule is amended by adding the following sections:

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

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) Except as described in s. 12(4) or s. 12(7) of this Rule, an insurer applying a sales charge option other than the deferred sales charge option to a deposit to an individual variable insurance contract where the insurer and insured had previously agreed the deferred sales charge option would apply to the deposit.

12(4) Section 12(3) of this Rule does not prescribe that it is an unfair or deceptive act or practice for an insurer to apply a sales charge option to a deposit that is unequivocally better for the insured than the deferred sales charge if, before or promptly after the insurer first applies the new sales charge option, the insured receives written disclosure from the insurer that,

(i) informs the insured what sales charge option the insurer is applying,

(ii) explains how the sales charge option in s. 12(4)(i) of this Rule works,

(iii) informs the insured of the existence of other available sales charge options, if any, and

(iv) explains how the insured can obtain information about any other available sales charge options.

12(5) For the purpose of s. 12(4) of this Rule, a sales charge option is unequivocally better for an insured than the deferred sales charge it replaces only if,

(i) the percentage amount of any initial sales charge is no greater than in connection with the deferred sales charge,

(ii) the management expense ratio is no greater than in connection with the deferred sales charge,

(iii) no other fee or charge associated with the sales charge option is less favourable to the insured than under the deferred sales charge option, and

(iv) the sales charge option applied does not involve any new conflict between the interests of the insured and the interests of the insurer or an agent to the detriment of the insured.

12(6) For the purpose of s. 12(5) of this Rule, the advisor chargeback sales charge option is not unequivocally better than the deferred sales charge.

~~12(3)12(7)~~ Section 12(3) of this Rule does not prescribe that it is an unfair or deceptive act or practice for an insurer to apply a sales charge option to a deposit if, before the insurer applies the sales charge option, 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 the 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) the insured is deemed to have agreed to the default sales charge option because 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)~~12(8) 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.

~~3.4.~~ This Amendment will come into force ~~on the later of~~,

(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 the date that Amendment 1—Deferred Sales Charges—Issuing and Changing Individual Variable Insurance Contracts comes into force.