Financial Services Regulatory Authority of Ontario ("FSRA")

Publication of Board Approved Amendment 2 on FSRA's Website (the "Publication")

Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts ("Board Approved Amendment 2")

Rule 2020 – 002 Unfair or Deceptive Acts or Practices Rule (the "UDAP Rule")

Introduction

This Publication contains material to satisfy clauses (1)-(5) of s. 23(2) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "**FSRA Act**").

FSRA has created this Publication after completing a second consultation on Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts (the "**Second Proposed Amendment**"). The second consultation began on June 1, 2023 and ended on June 30, 2023.

After considering submissions received during the second consultation, FSRA has determined that no changes to the Second Proposed Amendment are necessary. As FSRA is not proposing any changes, FSRA is not required to conduct a third consultation.

FSRA's board of directors (the "**Board**") approved Board Approved Amendment 2 on October 27, 2023.

Please refer to Appendix A for Board Approved Amendment 2.

Delivery to the Minister

FSRA delivered Board Approved Amendment 2 and the material required by s. 23(1) of the FSRA Act to the Minister of Finance (the "**Minister**") on January 8, 2024.

No Action Taken by the Minister

If the Minister does not approve, reject or return Board Approved Amendment 2 to FSRA for further consideration, then it will come into force on the 75th day after being delivered to the Minister.[1]

As FSRA delivered Board Approved Amendment 2 to the Minister on January 8, 2024, it will come into force on March 23, 2024, if the Minister does not take any action.

[1] See s. 24(2)(b) of the FSRA Act.

Statement of Substance and Purpose

i. Purpose

One purpose of Board Approved Amendment 2 is to promote high standards of business conduct in relation to deferred sales charges ("**DSC**" or "**DSCs**").[2] Board Approved Amendment 2 would introduce new regulatory prohibitions that would heighten standards of business conduct. For example, insurers would be prohibited from accepting deposits on a DSC basis if the individual variable insurance contract ("**IVIC**" or "**IVICs**")[3] allows the insurer to remove DSC as a sales charge option and accept deposits under a different sales charge option. By strengthening standards of business conduct with respect to DSCs, Board Approved Amendment 2 would promote high standards of business conduct.

Another purpose is to protect the rights and interests of customers in relation to DSCs.[4] By mandating disclosures, Board Approved Amendment 2 would facilitate greater customer understanding of the sales charge options available under their contracts and of whether it would be suitable for them to continue making deposits on a DSC basis. This change would enable customers to make more informed decisions and improve their ability to protect their own rights and interests. As well, customers would be protected from insurer conduct which could negatively impact their interests because Board Approved Amendment 2 would prohibit insurers from accepting deposits on a DSC basis if insurers can remove DSC as a sales charge option and instead accept deposits under a different sales charge option.

Board Approved Amendment 2 also provides clarity to industry on the treatment of DSCs for IVICs issued before June 1, 2023.

ii. Substance

Board Approved Amendment 2's substance is to, in a principles-based and outcomes-focused manner, implement measures to protect customers from negative outcomes related to DSCs for all IVICs.

Section 439 of the *Insurance Act* (the "**Act**") provides that no person shall engage in any unfair or deceptive act or practice ("**UDAP**"). UDAPs are defined under s. 438 of the Act as any activity or failure to act that is prescribed by a FSRA Rule as a UDAP. According to s. 2(1) of the UDAP Rule, for the purposes of the definition of UDAP under 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 that rule is prescribed as a UDAP.

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[2] This purpose is consistent with s. 3(2)(a) of the FSRA Act, which provides that an object of FSRA in respect of the financial services sectors is to promote high standards of business conduct.
[3] IVICs are also known as individual segregated fund contracts.
[4] This purpose is consistent with s. 3(2)(b) of the FSRA Act, which provides that an object of FSRA in respect of the financial services sectors is to protect the rights and interests of consumers.

Board Approved Amendment 2 would protect consumers by adding new prohibited outcomes related to DSCs for all IVICs as follows.

Section	Prohibited Outcome	Notes
12(2)	An insurer accepting a deposit to an individual variable insurance contract 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.	If an insurer insures a contract that involves a DSC, and the insurer has the power under the contract to remove that sales charge option and allow the customer another way to make deposits to the contract, then the insurer must either: (1) remove the DSC option, while leaving another sales charge option under which the customer can make deposits; or (2) find another legally valid way to ensure the customer does not make any further deposits to the contract on a DSC basis.
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.	This outcome applies where an insurer removes the DSC option for future payments, but the customer has already arranged to make future deposits on a DSC basis (e.g., through a pre-authorized payment plan). In this case, the insurer needs to take the steps described under either 12(4) or 12(7) before it applies a new (non-DSC) sales charge to the future payments that the customer had previously agreed would be subject to a DSC.
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	When the insurer removes the DSC option from a contract and the customer had already arranged to make future payments on a DSC basis, the insurer needs to decide

	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.	how to deal with those future payments. If the insurer decides it wants to apply a new sales charge option to these future deposits that is unequivocally better for the customer than the DSC it removed, then the insurer can take the steps described in 12(4): • write to the customer before or promptly after the first payment is made to which the insurer wants to apply the new option, and • give the customer the information listed in 12(4). Note that if the customer receives the disclosure and does not want the new sales charge option, the customer can contact the insurer and ask them to apply a different option available under the contract to future payments.
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	The insurer cannot use the simplified disclosure in 12(4) unless the new sales charge option is unequivocally better by meeting the criteria in 12(5).

	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.	The insurer cannot use the simplified disclosure in 12(4) if the insurer wants to apply the advisor chargeback sales charge option to the pre-authorized payments.
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, (i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, 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,	When the insurer removes the DSC option from a contract and the customer had already arranged to make future payments on a DSC basis, there is a second way the insurer can shift to a new sales charge option for these future payments. This option is open to the insurer whether or not the new option is unequivocally better for the customer than the DSC that is removed. Under this approach, the insurer must either: • get the customer's agreement that a new sales charge option will apply to the future payments, or • notify the customer of the default option that will apply and the date on which the default will apply and give the customer a reasonable time to contact the insurer to choose a different option.

	(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.	In the latter case, the insurer can only apply the default option if the customer does not respond by the deadline. In either case, the insurer must write to the customer and provide the information listed in 12(7)(i) before the insurer applies the new sales charge option. This information must be reasonably designed to help the customer choose a new suitable sales charge option that will apply to the pre-arranged future deposits.
12(8)	An insurer accepting a deposit to an individual variable insurance contract 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	This outcome applies where a contract involves a DSC and the insurer does not have the right under the contract to remove the DSC option and leave another way for the customer to make future deposits to the contract. In this case, the insurer must give the customer written disclosure that is reasonably designed to help the insured understand the sales

	charge basis is suitable for that insured.	charge options available to them, and whether it is suitable for them to keep making deposits on a DSC basis. The insurer must provide this information before it accepts any future DSC deposits on the contract. FSRA expects that this information will be: • Written in plain language • Well organized • Structured to promote action by the owner[5] where necessary (e.g., if a customer has pre-authorized payments on a DSC basis and that sales charge option is not suitable). The information required will vary by circumstance. The disclosure should clearly explain the sales charge options available under the existing IVIC. This includes how they work, their advantages and disadvantages, and situations in which they are and are not suitable. Where there are no sales charge options under the existing IVIC that are likely to be suitable for the customer, the disclosure should also address the question of whether the customer should continue to make deposits to that IVIC or whether it would be more suitable for them make another choice. This issue may arise, for instance, where the only sales

[5] Note that Board Approved Amendment 2 uses the word "insured" rather than "owner" but under Part V of the *Insurance Act*, which governs IVICs, the word "insured" means the person who owns the IVIC. Please refer to ss. 171(1) "insured," 199(1)(b), 199(2) and 200(3) of the *Insurance Act.*[6] Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts ("**Amendment 1**").

		charge option under the existing IVIC is DSC. To answer this question, the insurer should give the customer information about their options. For example, if the insurer sells new IVICs that do not involve DSC, the disclosure might involve a comparison of the existing contract and new ones available for sale. The disclosure would compare the benefits, costs and limitations of the existing IVIC to the new one and explain when each would be suitable.

Blackline of UDAP Rule

Please refer to Appendix B for a blackline showing the changes made to the UDAP Rule by Board Approved Amendment 2.

Flowchart of Board Approved Amendment 2

To better understand Board Approved Amendment 2, please refer to Appendix E. Appendix E contains a flow chart that shows how the changes will affect contracts that exist when Board Approved Amendment 2 takes effect.

Written Comments Received and Responses to Significant Concerns

FSRA must publish a summary of written comments received and FSRA's responses to significant issues and concerns brought to FSRA's attention during the consultation periods.

Please refer to,

- appendix C for a summary of comments and FSRA's responses in relation to the first consultation; and
- appendix D for a summary of comments and FSRA's responses in relation to the second consultation.

Background

In February 2022, the Canadian Council of Insurance Regulators and Canadian Insurance Services Regulatory Organizations (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, in line with the June 1, 2022 ban in securities. The Insurance Regulators stated they expected insurers to move towards the cessation of DSC sales by June 1, 2023.

FSRA has implemented the Insurance Regulators' position through an amendment[6] to the UDAP Rule. This amendment came into force on June 1, 2023.

FSRA's view is that it is also necessary to implement Board Approved Amendment 2 to create more customer protections with respect to DSCs. These protections would apply to IVICs issued prior to June 1, 2023 that involve DSCs.

FSRA held an initial consultation on the Second Proposed Amendment, which began on November 25, 2022 and ended on February 23, 2023. After making material changes to the Second Proposed Amendment, FSRA held a second consultation.

After the second consultation concluded, FSRA analyzed submissions received on the Second Proposed Amendment. Based on these submissions, FSRA determined that no further changes to the Second Proposed Amendment were required. In turn, FSRA sought the Board's approval of the Second Proposed Amendment. After the Board's approval on October 27, 2023, the Second Proposed Amendment became Board Approved Amendment 2.

[6] Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts ("**Amendment 1**").

Appendix A – Board Approved Amendment 2

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 "**Board Approved Amendment 2**").

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,

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 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(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,

(i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, 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(8) An insurer accepting a deposit to an individual variable insurance contract 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.

4. This Board Approved Amendment 2 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 – Blackline of the UDAP Rule

Unfair or Deceptive Acts or Practices

1 Interpretation

1(1) In this Rule,

(i) "Act" means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,

(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,

(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"

(c) means,

(iii) 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,

(iv) 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

(v) 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,

(d) 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,

(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. 12 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. 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.

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 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.

12(2) An insurer accepting a deposit to an individual variable insurance contract 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(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,

(i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, 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(8) An insurer accepting a deposit to an individual variable insurance contract 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.

13 Coming into Force

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 – Summary of Comments and Responses (First Consultation)

General

Comments	Response
The majority of commenters supported the goal of protecting customers who own existing contracts that involve deferred sales charges ("DSCs" or "DSC"), but several raised concerns about the proposed method of achieving this goal. 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 individual variable insurance contracts ("IVICs" or "IVIC"). Another stakeholder urged FSRA to implement the DSC changes in a simple, transparent and cost-efficient way.	The Financial Services Regulatory Authority of Ontario ("FSRA") appreciates the support from stakeholders for the goal of protecting customers who own existing IVICs with DSCs, and appreciates the comments about ways to achieve this goal. FSRA appreciates the submission from the stakeholders 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 a deferred sales charge option more often leads to unfair outcomes for customers. FSRA's view is that additional protections are therefore required for customers whose IVICs already involve DSCs.

Amount and Complexity of Disclosure – General

Comments	Response
Several commenters discussed the amount of disclosure. Some suggested more disclosure, particularly with respect to advisor compensation. Some suggested less disclosure, to avoid overwhelming and confusing customers.	FSRA believes that customers generally need the information listed in the first consultation draft of the Rule in order to make an informed choice about what sales charge option to use for future deposits.

Complexity and Adequacy of Disclosure – Withdrawal of DSC Option re Pre-Authorized DSC Payments

Comments	Response
Several commenters raised concerns about proposed requirements for insurers to provide disclosure to customers who had previously arranged for future payments on a DSC basis if the DSC option will no longer be available. In addition to the general comments about the amount, complexity and adequacy of disclosure to customers, one consumer advocate commenter pointed out that proposed Rule 2 relies primarily on disclosure to address potential consumer harms arising from existing contracts with DSC options. They noted that problems with relying on disclosure for this purpose include: not all consumers will be able to make appropriate choices; they might not receive adequate information about their options; they might not have access to an advisor to provide expert advice; or they may not receive the disclosure, or may ignore it, and may therefore be subject to the default option. This default option may not be appropriate for the consumers. Therefore, disclosure alone is not a satisfactory consumer remedy. One industry commenter also wrote about the disclosure required for customers whose pre-authorized deposits will move from DSC to another sales charge option. They suggested that where the new sales charge option has no upfront fee, and the ongoing fees would be the same or better for consumers, it would be in customers' best interest to keep the notice simple and concise. They suggested the disclosure proposed in the first consultation would be unnecessarily complicated and detailed in that situation.	In cases where the insurer proposes a new sales charge option that is better for the customer in all ways than a DSC that is being withdrawn, FSRA believes it is appropriate to allow the insurer to provide tailored disclosure that focuses on the new default sales charge option, instead of requiring the insurer to provide details of all available sales charge options. This approach will help to avoid overwhelming customers with unnecessary information, while providing a motivation for insurers to default customers to an option that is better for them, thus achieving the goal of treating customers fairly. Therefore, FSRA is proposing a new approach: • Where an insurer withdraws the DSC option and proposes a new sales charge option that is in all ways better for customers, the insurer will be allowed to provide less disclosure, which focuses on the new default option, • Otherwise, the insurer will be required to provide the full disclosure previously consulted on. In either case, the customer will always be able to contact the insurer to change their sales charge option for future pre-authorized payments to any option that is available at that time.

Some of the other commenters agreed that the disclosure would be complex and consumers might struggle to understand it. An industry commenter that represents agents recommended simply banning future DSC deposits for all contracts, as described below, rather than providing disclosure to help customers decide whether these deposits might be suitable for them.	

Frequency of Disclosure

Comments	Response
The consultation draft did not explicitly state how often disclosure must be given, simply stating the customer had to receive it "before" the insurer accepts a DSC deposit (where permitted) and "a reasonable time" before the insurer applies a new sales charge option to pre-authorized payments where DSC is no longer available. One industry commenter suggested the obligation to provide notice before accepting a DSC contribution, and before applying a new sales charge option to pre-authorized payments, should be a one-time obligation or, in the alternative, an annual reminder.	FSRA urges insurers to provide disclosure as frequently as is reasonably required to help ensure customers understand their rights and options well enough to make good choices with respect to sales charges on IVICs. FSRA recognizes the frequency of this disclosure may vary depending on the circumstances, such as the number and type of sales charge options that are available under the IVIC and the types of payments (e.g. monthly pre-authorized payments vs. individual ad hoc payments). Therefore, FSRA has not mandated a specific frequency for disclosure. Note that, for pre-authorized payments, FSRA expects disclosure to occur before the first pre-authorized payment under a new sales charge option, unless the insurer proposes a sales charge option that is unequivocally better. In that case, FSRA expects the disclosure to occur promptly after the first payment under the new sales charge option. FSRA does not expect the insurer to send the disclosure before each monthly pre-authorized payment.

Continuing DSC Deposits

Comments	Response

A commenter representing insurers asked FSRA to clarify if insurers are allowed to continue receiving deposits on a DSC basis in cases where the insurer cannot contractually remove the DSC option for future deposits. The commenter noted it would be helpful for FSRA to state affirmatively that DSC deposits can continue where no other contractual option is permitted.	It is FSRA's opinion that an insurer is not acting unfairly or deceptively toward consumers by continuing to receive deposits to an IVIC on a DSC basis where:
	• The insurer has provided the disclosure as required under s. 12(8), and
	• The insurer
	  ○ cannot remove the DSC option from the existing contract, and/or
	  ○ cannot do so without prohibiting the customer from making deposits to the IVIC.
	
	Under the UDAP rule-making authority, FSRA has the power to prescribe specific actions, omissions and outcomes that are prohibited under s. 439 of the *Insurance Act* and requirements that, if not complied with, constitute a UDAP. FSRA does not have the power to specify activities that are not UDAPs.
	
	For this reason, FSRA has not explicitly stated that insurers can continue to receive deposits on a DSC basis even if the insurer has no contractual right to remove the DSC option from an IVIC for future deposits.

Legacy Issues with Existing Contracts

Comments	Response
A commenter representing insurers said it may not be possible to switch the sales charge option for some older contracts without a complete overhaul of the systems that administer them. The commenter asked FSRA to take a practical approach to these cases, recognizing the need to administer contracts in an efficient way since	In some cases, insurers may be able to comply with the Rule without removing the DSC option from their systems, such as by implementing controls to prevent deposits on a DSC basis or by changing deposit forms to remove DSC as an option.

these older contracts are often favourable to the contractholder, with features that are no longer offered.	However, FSRA understands there are some situations involving older contracts in which an insurer has the legal ability to comply with Rule 2 but the cost of complying with the Rule, which could be passed on to customers through an increase to the management expense ratio, would be disproportionately high compared to the benefits customers would receive from the changes. Also, FSRA has confirmed there are some circumstances where an insurer could comply with Rule 2 by prohibiting customers from making any further deposits to their IVICs, but this would disadvantage customers because their existing IVICs offer benefits that are no longer offered at a similar price under new IVICs on today's market. FSRA recommends that insurers should contact the regulator if they believe the only practical way to comply with Rule 2 would be to treat customers unfairly. FSRA is open to discussing options in these cases to ensure customers are treated fairly.

Banning all new DSC Deposits under existing IVICs

Comments	Response
One commenter recommended that, instead of allowing DSC deposits to continue where the insurer does not have the contractual right to unilaterally remove this option, FSRA should prohibit all future deposits under the DSC option, including deposits to existing contracts. The commenter suggested that if the contract in question does not give the insurer the right to unilaterally eliminate DSCs for future deposits, then future deposits should be made under a new contract.	As noted in the Notice of Rule published on November 25, 2022, FSRA considered banning new DSC deposits on all IVICs but decided against this approach because it would be an extraordinary interference with existing IVICs and could lead to unexpected customer harm. In addition, this approach would not harmonize with the approaches taken in other Canadian jurisdictions.

	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. This is particularly an issue for older IVICs that offer guarantees that are either unavailable under newer IVICs, or unavailable at the same price. FSRA confirms that it does not propose a Rule that would prevent all customers from making deposits to existing contracts and obtaining the benefits of those contracts.

No retroactive requirements

Comments	**Response**
A commenter representing insurers noted that some insurers have already notified their customers of expected changes to DSCs, and said it is important that the new requirements not be given retroactive effect. They said the new requirements should not be deemed to apply to notices provided before the final Rule is published.	FSRA confirms that Rule 2 will only apply to transactions that occur after the new Rule takes effect. However, it is important to be clear that Rule 2 will apply to all transactions that occur after it takes effect, even if an insurer has provided disclosure to consumers about those transactions before the amendment is finalized.

Clarity of Rule

Comments	Response
Some commenters raised concerns about the wording of the proposed Rule, suggesting it was difficult for industry and the public to understand. One asked FSRA to confirm that insurers are allowed to continue to accept deposits on existing IVICs on a DSC basis where no other option is available, and to clarify that the requirements should not apply to notices that were sent before the Rule was published.	FSRA recognizes the challenges of drafting positive obligations through prohibitions under its UDAP Rulemaking Power. FSRA confirms that the intention behind the proposed Rule is that insurers will be allowed to continue to accept deposits on existing IVICs on a DSC basis where no other option is available, if the insurers meet the disclosure obligations under the Rule.

Effective Date and Implementation Timeline

Comments	Response
One commenter 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. Another commenter recommended implementing Rule 2 at the earliest opportunity.	In February 2022, CCIR and the Canadian Insurance Services Regulatory Organizations ("CISRO") announced that regulators across Canada would work to ban DSCs on segregated fund contracts by June 1, 2023. However, FSRA recognizes that the details of Rule 2 are not contained in that announcement. FSRA appreciates the steps insurers need to complete to comply with the DSC obligations in Ontario will depend on the final wording of FSRA's Rule. FSRA will take this into consideration as FSRA moves forward with supervisory efforts.

Harmonization

Comments	Response
Some commenters emphasized the importance of a harmonized approach to DSCs. One focused on harmonization of national insurance requirements. Others supported harmonization as compared to mutual fund requirements.	FSRA recognizes that national harmonization is important and that insurers must be able to comply with their obligations in all jurisdictions. However, in light of the long-term nature of the contracts involved, FSRA considered it a priority to take steps outlined in Rule 2 to protect customers whose existing IVICs allow future deposits on a DSC basis. If insurers who seek a national solution are concerned that following Rule 2 would cause them to be in noncompliance with laws in other provinces then FSRA would be pleased to participate in discussions with other provinces to encourage national harmonization.

Other Upfront Compensation

Comments	Response
A few commenters discussed upfront compensation generally, outside DSCs. Two commenters urged FSRA, in its work with CCIR and CISRO, to consider banning all upfront compensation including compensation under the advisor chargeback sales charge option. One consumer advocate commenter recommended that FSRA should provide additional guidance about the range of alternative sales charge options permitted and ensure insurers do not offer the advisor chargeback option in place of deferred sales charges. In contrast, two agents raised concerns about recent regulatory and consumer advocate criticisms of upfront commissions and suggested	Until CCIR and CISRO issue guidance with respect to their consultation, FSRA notes that: • Where insurers and customers have agreed to contracts (i.e. IVICs) that involve the Advisor Chargeback sales charge option, this option is available for future deposits • The Advisor Chargeback sales charge option does, however, create conflicts between the interests of customers and the agents who serve them • This option may motivate agents to recommend clients retain investments in segregated funds that no longer match the clients' interests

there may be unintended consequences of removing upfront compensation, including access to advice for Canadians.	• This issue does not arise where a customer has chosen a DSC (although the DSC option does involve other conflicts that do not apply to the Advisor Chargeback option) • Therefore, the Advisor Chargeback option is not in all ways better for the customer than the DSC option For these reasons, FSRA has decided that an insurer will not be able to use the focused (less-detailed) disclosure if the insurer replaces the DSC option for future pre-authorized payments with the Advisor Chargeback option.

Other

Comments	**Response**
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.	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.

Appendix D – Summary of Comments and Responses (Second Consultation)

Support purpose of Rule 2

Comments	Response
Stakeholders expressed support for the purpose and goals of Rule 2. Stakeholders appreciated the efforts FSRA is taking to address sales charge options that present a risk of harm to consumers, including the elimination of Deferred Sales Charges ("DSCs") on segregated funds, and the changes FSRA made to Rule 2 to address comments from the first consultation.	FSRA appreciates stakeholder support for the goals and outcomes of Rule 2.

Simplified disclosure process

Comments	Response
Several stakeholders expressed support for the simplified disclosure process added to Rule 2. These stakeholders support encouraging insurers to offer customers sales charge options which are unequivocally better than DSCs to avoid the cost and effort of the more complex disclosure. One industry association asked FSRA to explain why it is disincentivizing the use of advisor chargeback by indicating it is not unequivocally better than DSC. Many stakeholders agreed that the advisor chargeback sales charge option ("ACB") is not unequivocally better than DSC, with one consumer advocate group noting ACB has a potential conflict between the contract owner's interest and the agent's interest at time of redemption which is not present for DSCs. The stakeholder notes this conflict of interest would be contrary to Rule 2's proposed s. 12(4)(iv), and therefore, insurers would not be able to offer ACB as a default alternative to DSC when using the simplified disclosure process.	FSRA appreciates support for the simplified disclosure process. FSRA confirms its position that ACB is not in all cases better for clients than DSC. As FSRA noted in the summary of Comments and FSRA Responses from the first consultation ("Previous Summary and Response"), ACB may motivate agents to recommend clients retain investments in segregated funds that no longer match the clients' interests. This issue does not arise where a customer has chosen a DSC (although the DSC option does involve other conflicts that do not apply to the Advisor Chargeback option). Therefore, the Advisor Chargeback option is not in all ways better for the customer than the DSC option. FSRA explicitly noted this in s. 12(6) of Rule 2.

Challenges with Disclosure

Comments	Response
One consumer advocate group raised concerns that the average consumer will face challenges understanding the disclosure contemplated by Rule 2. This stakeholder raised particular concerns about cases where ACB is used to replace DSC; the stakeholder believes that simply requiring disclosure to consumers as described in the Rule is inadequate to protect their interests in this situation. Instead, in this scenario, the stakeholder commented that FSRA should find ways to make sure disclosure is clear, easy-to-read and consistent across different insurers. To achieve this, the stakeholder suggests FSRA: • conduct behavioural insights research to determine the best format for disclosure, • require advisors to discuss the ACB option with clients and clearly explain the potential conflict of interest that may arise, and • require insurers and advisors to document how they fulfil their disclosure obligations.	FSRA appreciates stakeholder comments on the complexity of disclosure. FSRA believes disclosure designed to help customers understand their sales charge options should be clear, should be written in easy-to-read language and should be designed to address the questions customers will likely have about their sales charge options. While consistency is generally desirable, FSRA recognizes the disclosures under Rule 2 may vary depending on the circumstances. For example, where an insurer can remove the DSC option from a contract, the disclosure will likely vary depending on the number and type of sales charge options that are available under the IVIC and may vary depending on the types of payments the customer makes (e.g. monthly pre-authorized payments vs. individual ad hoc payments). As mentioned in the Previous Summary and Response, FSRA added the option of new simplified disclosure to Rule 2 to help avoid overwhelming customers with unnecessary information, while providing a motivation for insurers to default customers to an option that is unequivocally better for them, thus achieving the goal of treating customers fairly. Similar issues arise where the contract does not allow the insurer to introduce new sales charge options. In that case, if the only sales charge option is DSC, the disclosure may vary depending on the benefits and guarantees available under the IVIC and on the costs, benefits and guarantees available under other IVICs the insurer has available that might be appropriate for customers who wish to make new investments to an IVIC that does not involve DSCs. As part of the broader national work on segregated funds, Canadian Council of Insurance Regulators (“CCIR”) and the Canadian Insurance Services Regulatory Organizations (“CISRO”) intend to release guidance on how

	insurers and intermediaries should sell and service IVICs. This guidance will go beyond disclosure and help ensure IVICs, segregated fund selections and other IVIC-related transactions (e.g., beneficiary designations) will be suitable for customers.

Clarify "reasonable time"

Comments	Response
One industry association requested that FSRA clarify the meaning of "reasonable time" in s. 12(7)(ii)(b) of Rule 2. The stakeholder believes that this additional clarity would facilitate compliance and prevent unintended negative consequences for customers.	Stakeholders provided similar comments in the previous consultation on "reasonable time" and the frequency of disclosure. In the Previous Summary and Response, FSRA urged insurers to provide disclosure as frequently as is reasonably required to help ensure customers understand their rights and options well enough to make good choices with respect to sales charges on IVICs. FSRA recognizes the timing of this disclosure may vary depending on the circumstances, such as the number and type of sales charge options that are available under the IVIC and the types of payments (e.g. monthly pre-authorized payments vs. individual ad hoc payments). Using "reasonable time" is a more outcome-focused provision that can work for each of these unique circumstances.

Completely eliminate DSCs

Comments	Response
One industry association raised concerns with the cost and regulatory burden of developing the disclosure proposed under the Rule. This association does not represent the stakeholders that would be primarily responsible for developing this disclosure. This stakeholder suggests FSRA should completely ban DSCs on all future deposits, even in cases where the insurer does not have the right to unilaterally eliminate DSCs under existing contracts. Instead, this stakeholder recommends all future deposits should be made under a new contract with the insurer. The stakeholder notes that this	As noted in the Notice of Rule published on November 25, 2022, FSRA considered banning new DSC deposits on all IVICs but decided against this approach because it would be an extraordinary interference with existing IVICs and could lead to unexpected customer harm. In addition, this approach would not harmonize with the approaches taken in other Canadian jurisdictions. 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. This is particularly an issue for older IVICs that offer guarantees

new contract should retain the benefits of the previous contract with DSCs, such as the death benefits, maturity guarantees and reset options. Another stakeholder noted that there are structural limitations that prohibit a DSC ban for older legacy contracts. The stakeholder noted investors who own older IVICs have contractual rights under them, and these legacy contracts may offer benefits no longer offered by newer contracts. The stakeholder noted that some of these contracts only offer the DSC option for deposits. This stakeholder, another industry association, raised concerns that insurers with existing contracts might try to "game" the outcome by removing non-DSC options from the contract. The stakeholder calls for FSRA to prevent such abuse from happening.	that are either unavailable under newer IVICs, or unavailable at the same price. With respect to the first stakeholder's suggestion that FSRA should ban DSC deposits on existing contracts and, where necessary, require insurers to provide identical contracts that offer non-DSC options for new deposits, FSRA notes that this approach would not appear to result in an overall reduction of burden for the insurance industry. Creating the new contracts to replace existing ones that only offer DSCs would likely take significantly more effort than creating the disclosure described under the proposed Rule. FSRA confirms that it does not propose a Rule that would prevent all customers from making deposits to existing contracts and obtaining the benefits of those contracts. FSRA reminds insurers that we expect them to treat customers fairly and notes that removing non-DSC options so customers could only make deposits to existing contracts on a DSC basis would not be considered treating customers fairly.

Complex

Comments	**Response**
A couple of stakeholders raised concerns with the complexity of the proposed amendments. One stakeholder suggested that Rule 2 should be simplified and clarified. The other stakeholder suggested that FSRA should publish an explanatory document along with the final rule. This stakeholder also expressed support for FSRA redrafting Rule 2 into a consolidated rule which also covers other segregated fund requirements, following the upcoming CCIR and CISRO guidance dealing with IVICs.	FSRA recognizes this is a complex rule and notes the challenges of drafting positive obligations through prohibitions under its UDAP Rulemaking Power. To assist with this challenge, FSRA created a flowchart to accompany the notice of change. We will continue to consider options for providing additional clarity.

S. 12(8) Disclosure	
Comments	**Response**
A couple of industry associations commented on the disclosure process contemplated by s. 12(8) of Rule 2, which applies in circumstances where insurers do not have the contractual right to remove the DSC option from an existing contract. One association suggested FSRA change the wording of s. 12 (8) so insurers should be able to provide the disclosure shortly after accepting a DSC deposit, instead of being required to provide the disclosure before accepting a deposit on a DSC basis. The other stakeholder suggested that this disclosure process should be clarified and expanded.	Section 12(8) is outcome-focused and is designed to apply to a variety of situations The disclosure content is expected to vary depending on the circumstances. The disclosure under s. 12(8), where a customer has a contract that will continue to offer a DSC option, must be reasonably designed to help the customer understand the sales charge options available to them and whether making deposits on a DSC basis is suitable for them. This means that the disclosure should be: • Written in plain language • Well organized • Structured to promote action by the owner where necessary (e.g., if a customer has pre-authorized payments on a DSC basis and that sales charge option is not suitable). The disclosure should clearly explain the sales charge options available under the existing IVIC. This includes how they work, their advantages and disadvantages, and situations in which they are and are not suitable. Where there are no sales charge options under the existing IVIC that are likely to be suitable for the customer, the disclosure should also address the question of whether the customer should continue to make deposits to that IVIC or whether it would be more suitable for them make another choice. This issue may arise, for instance, where the only sales charge option under the existing IVIC is DSC. To answer this question, the insurer should give the customer information about their options. For example, if the insurer sells new IVICs that do not involve DSC, the disclosure might involve a comparison of the existing

	contract and new ones available for sale. The disclosure would compare the benefits, costs and limitations of the existing IVIC to the new one and explain when each would be suitable. FSRA will not add the words "or promptly after" to s. 12(8) because customers need this disclosure before they make a deposit to know whether making a deposit on a DSC basis is suitable for them.

Implementation

Comments	Response
One consumer advocate group encourages the implementation of Rule 2 at the earliest opportunity. Two industry stakeholders noted that there needs to be sufficient time after Rule 2 is finalized to allow for the implementation of processes to comply with the new UDAPs. These stakeholders requested an implementation timeline of 18 – 24 months. One stakeholder that asked for this implementation period suggested that no administrative monetary penalties should be levied for non-compliance for at least one year after the effective date of Rule 2. The other stakeholder noted that the time for implementation needs to consider other work insurers are doing to satisfy the CCIR/CSA Total Cost Disclosure enhancements. One of the industry associations also noted some insurers are proactively providing notices to their customers of changes the insurer is making to existing contracts with DSCs. This association believes that no supplementary notices about DSCs will need to be provided if the notices were generally aligned with the consultation drafts of Rule 2.	In February 2022, CCIR and CISRO announced that regulators across Canada would work to ban DSCs on IVICs by June 1, 2023. However, FSRA recognizes that the details of Rule 2 were not contained in that announcement. FSRA appreciates the steps and changes insurers need to complete to comply with the DSC obligations in Ontario will depend on the final wording of FSRA's Rule. FSRA will take this into consideration as FSRA moves forward with supervisory efforts. As noted in Previous Summary and Response, FSRA confirms that Rule 2 will only apply to transactions that occur after the new Rule takes effect. However, it is important to be clear that Rule 2 will apply to all transactions that occur after it takes effect, even if an insurer has provided disclosure to consumers about those transactions before the amendment is finalized.

Legacy Systems

Comments	Response
One industry association noted it may not be possible to switch sales charge options for contracts administered on legacy IT systems. This stakeholder believes the appropriate approach to dealing with these situations is for the insurer to contact FSRA and agree on a solution that will ensure customers are treated fairly.	During the previous consultations, FSRA encouraged insurers to reach out to the regulator if the insurer felt the only practical way to comply with Rule 2 would be to treat customers unfairly. FSRA is open to discussing options in these cases to ensure customers are treated fairly.

Ban Advisor Chargeback

Comments	Response
Many stakeholders commented on ACB. Stakeholder groups, including consumer advocates and some industry groups, believe upfront commission, including ACB, poses similar consumer protection issues and conflicts of interest as "DSCs. One stakeholder commented that all upfront commission structures pose inherent conflicts of interest which are fundamentally irreconcilable with an agent's obligation to provide unbiased advice influenced only by the needs and interests of the customer. A couple stakeholders commented that the prospect of an advisor having to repay upfront commission can pose an irreconcilable conflict if a customer's personal circumstances reasonably dictate that the customer make a switch or redemption which would trigger the chargeback. One stakeholder group appreciates the call by CCIR and CISRO for insurers to put in place risk control measures to encourage the fair treatment of customers when ACBs are used. This stakeholder calls for FSRA to monitor whether insurers are implementing these controls as intended. The stakeholder also recommends that FSRA require insurers	FSRA appreciates stakeholder comments on ACBs and its potential risks for customer harm. As a member of CCIR and CISRO, FSRA supports the May 15, 2023 CCIR-CISRO Position on the Discussion Paper on Upfront Compensation in Segregated Funds. This position recognizes that ACBs can pose a risk of customer harm and sets out a number of control measures for the insurance sector to help manage these risks when using ACBs. FSRA continues to work with other insurance regulators at a national level to develop guidance on segregated funds and, in particular, with respect to ACBs. In the May 15 announcement, CCIR and CISRO "recognize[d] that there are many connections between product suitability and conflicts of interest involved with compensation, and believe it is important to release guidance that deals with both aspects, to provide comprehensive conduct expectations to insurers and intermediaries." Once this guidance is implemented, FSRA intends to work cooperatively with other regulators to assess the effectiveness of the risk control measures and, should we become aware of unfair outcomes in the future, we will consider further action.

to periodically report on the use of ACBs, such as the number of new clients subject to ACBs. Overall, these stakeholders believe that disclosure and control measures are insufficient to manage the risks of consumer harm associated with ACB. Instead, they suggest FSRA should ban ACBs as well as DSCs. While generally preferring that DSCs and ACB be banned, one stakeholder group felt an option where the customer suffers no penalties for a redemption, such as ACB, is a net benefit to the customer, compared to DSC, if there are no other alternative options.	

Harmonize with other regulators

Comments	Response
A couple of stakeholders encouraged FSRA to continue to work with other regulators to arrive at a harmonized approach. One industry association indicated a national approach to DSCs enables insurers to implement changes in the most efficient way. One consumer advocate group encouraged FSRA to continue collaborating with other regulators to promote better experiences and outcomes for consumers by strengthening the regulation of upfront compensation in IVICs	FSRA recognizes national harmonization is important.. FSRA continues to work with other regulators to align measures which protect customers whose existing IVICs allow future deposits on a DSC basis.

Rule-Making Authority

Comments	Response
Several stakeholders called for stronger tools for FSRA to regulate market conduct more generally to better protect consumers of insurance products.	FSRA appreciates stakeholder comments on this topic and agrees rule-making authority over market conduct is important for setting standards for consumer protection.

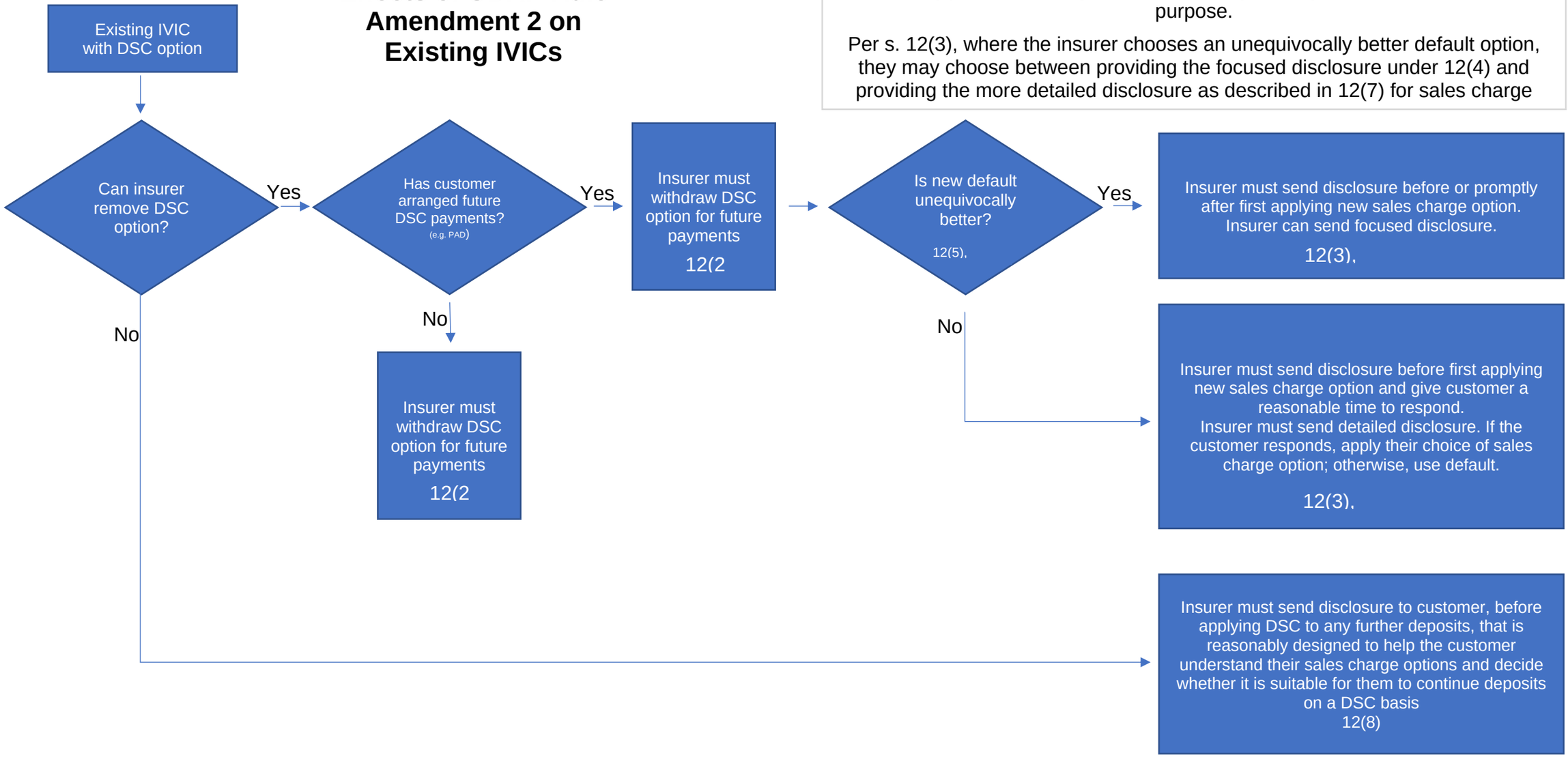
These stakeholders encouraged FSRA to seek expanded rule-making powers to more closely align with rule-making powers given to securities regulators and to address other harms FSRA has identified in its recent supervision and enforcement actions related to agent conduct and MGAs. One stakeholder agrees that DSCs and ACBs are a critical issue that deserves regulatory attention. However, this stakeholder commented that there are many other issues that need to be addressed through clear, rule-based requirements for those engaged in manufacturing, selling and advising the public on insurance products, including segregated funds.	Once changes to section 121.0.1 (1) 11.1 of the *Insurance Act* are proclaimed, FSRA will have rule-making authority for IVICs and segregated funds. FSRA is currently working with other regulators on national guidance for IVICs, including market conduct expectations. FSRA intends to adopt and mandate adhererence to the national guidance in Ontario through a FSRA rule.

Benefits of Advisor Chargeback

Comments	Response
One industry association believes that ACB incents agents to give long-term advice consistent with customers' long-term investment horizons. This stakeholder commented that discouraging ACB can make it harder for some customers to access advice and IVICs, especially beginner investors with limited investment experience. One stakeholder commented that FSRA should ensure advisors can be adequately paid for the advice they provide, without putting excessive burdens on investors or generating unmanageable conflicts of interest.	FSRA appreciates stakeholder comments on ACBs. FSRA supports the May 15, 2023 CCIR-CISRO Position on the Discussion Paper on Upfront Compensation in Segregated Funds. This position recognizes that ACBs can pose a risk of customer harm and sets out a number of control measures for the insurance sector to help manage these risks when using ACBs.

Appendix E – Amendment 2 Flow Chart

Effects of UDAP Rule Amendment 2 on Existing IVICs



See s. 12(5) for more information about what “unequivocally better” means.

Per s. 12(6), advisor chargeback is not unequivocally better than DSC for this purpose.

Per s. 12(3), where the insurer chooses an unequivocally better default option, they may choose between providing the focused disclosure under 12(4) and providing the more detailed disclosure as described in 12(7) for sales charge