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.