

Financial Services Regulatory Authority of Ontario (“FSRA”)

Notice of Rule (the “Notice”) under the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “*FSRA Act*”)

Rule 2024-002 – Total Cost Reporting (the “Proposed Rule”)

Introduction

FSRA is strengthening Ontario’s regulatory framework by taking steps to protect owners¹ of individual variable insurance contracts (“**IVIC**” or “**IVICs**,” also known as individual segregated fund contracts). The Proposed Rule would require insurers to provide owners with annual statements about their IVICs that contain information designed to:

- improve owners’ awareness of:
 - the performance of their investments in segregated funds
 - the cost of investing, including ongoing embedded fees such as management expenses and trading expenses
 - their rights to guarantees under their IVICs and how actions they take with respect to their IVICs might affect their guarantees,
- allow owners to more easily compare the cost of owning segregated funds with the cost of owning other investments, and
- help ensure owners have the information they need to make suitable choices about their investments.

As required by s. 22(1) of the *FSRA Act*, FSRA is publishing the Proposed Rule for comment on its website. Stakeholders can make written comments on the Proposed Rule within 60 days after the Proposed Rule’s publication. FSRA will publish stakeholder comments on its website.

Background

A joint committee of the Canadian Securities Administrators (“**CSA**”) and Canadian Council of Insurance Regulators (“**CCIR**”) has developed enhanced cost disclosure reporting requirements for investment funds (the “**Securities Amendments**”)² and new cost and performance reporting guidance for IVICs (the “**Insurance Guidance**”). Following public consultation, CCIR and the CSA adopted these documents on April 20, 2023.

¹ Note that the Proposed Rule 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*.

² The Securities Amendments are changes to National Instrument 31 – 103 *Registration, Exemptions and Ongoing Registrant Obligations* and Companion Policy 31 – 103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

On June 20, 2023, Ontario's Minister of Finance (the "**Minister**") [approved](#) amendments to National Instrument 31-103 to implement the Securities Amendments, effective January 1, 2026. No similar law ensures the Insurance Guidance will be enforceable in Ontario. The purpose of the Proposed Rule is to make the expectations set out in the Insurance Guidance mandatory for Ontario IVICs and to ensure customers will receive the first enhanced annual statements for the year ending on December 31, 2026.

Previous Regulatory Consultations

The Securities Amendments and Insurance Guidance follow extensive work and consultations. They build on the CSA's Client Relationship Model, Phase 2 project in 2016 and the CCIR Segregated Fund Position Paper. Consultations were also conducted with investor advocates and market participants, including at the June 2021 and June 2022 meetings of the Joint Forum of Financial Market Regulators.

Initial versions of the Securities Amendments and Insurance Guidance were posted for a 90-day consultation period on April 28, 2022. During this consultation period, 38 letters were received from insurance and securities stakeholders. With respect to the Insurance Guidance, insurers commented on the importance of the Insurance Guidance remaining as harmonized as possible with the Securities Amendments.

After considering the stakeholder submissions received, the CSA and CCIR revised the Securities Amendments and Insurance Guidance and published final versions of the Securities Amendments and Insurance Guidance on April 20, 2023. The CSA and CCIR communicated that securities registrants and insurers need to deliver the first enhanced annual statements for the year ending on December 31, 2026.

Total Cost Reporting in Ontario

CCIR expects each of its member jurisdictions to adopt the Insurance Guidance within its local jurisdiction. In accordance with CCIR's expectation, the Proposed Rule would adopt the Insurance Guidance into Ontario's regulatory framework in a legally binding manner.

If approved by the Minister, the Proposed Rule will come into force by January 1, 2026. This would require insurers to provide owners with the enhanced annual statements early in 2027 for the year ending on December 31, 2026.

Industry Implementation

Insurance and securities industry members have begun implementing the expectations set out in the Insurance Guidance and the requirements under the Securities Amendments.

The CSA and CCIR have established an implementation committee with members of the insurance and securities industries to respond to industry questions and help ensure

they have the information they need to put the expectations and requirements under the Securities Amendments and Insurance Guidance into practice.

Substance and Purpose

The Proposed Rule will, if approved, harmonize Ontario's regulatory requirements with other Canadian jurisdictions in relation to the information customers will receive each year about:

- the cost of investing in investment funds and IVICs, and
- product performance and guarantee information for IVICs.

The current IVIC annual statement requirements in Ontario's legal regime do not match the Insurance Guidance's enhanced expectations. The Proposed Rule aims to harmonize Ontario's annual statement reporting requirements with the Insurance Guidance's enhanced expectations. Additionally, the Proposed Rule addresses an important concern that there are currently no requirements for insurers to provide ongoing reporting to owners on the costs of owning IVICs after the initial point of sale in a form which is specific to an owner's IVIC and easily understandable.

The Proposed Rule enhances owner protection by improving owners' awareness of:

- the ongoing embedded fees, such as management expense ratios ("**MERs**") and trading expense ratios ("**TERs**") that form part of the cost of owning IVICs, and
- their rights to guarantees under IVICs and how their actions might affect guarantees.

Summary of the Proposed Rule

Section 1: Interpretation

This section defines terms used in the Proposed Rule, including "management expense ratio", "trading expense ratio", and "fund expense ratio" ("**FER**"). The FER for each segregated fund is the sum of its MER and TER:

$$\text{FER} = \text{MER} + \text{TER}$$

The definitions in the Proposed Rule closely follow those under the Insurance Guidance. However, the Proposed Rule uses different language in places to be consistent with the language used under Ontario law. For example, the person who makes the contract with the insurer is referred to as an "insured" in the Proposed Rule for consistency with the terminology under the *Insurance Act* (the "**Act**").³ In contrast, the Insurance Guidance refers to an "owner" since, in practice, that is the more commonly used term for the same person.

³ Please refer to ss. 171(1) "insured," 199(1)(b), 199(2) and 200(3) of the *Insurance Act*.

Section 2: Annual Statement to Insured

Requirement to send statement

This section requires an insurer to provide each person who owns an IVIC with an annual statement that contains the information described in Schedule A of the Proposed Rule. For more details see Schedule A to the Proposed Rule, which is found in Appendix A.

These annual statements must be provided within four months of the end of the fiscal year for each of the IVIC's segregated funds.

Requirement to provide historical data in annual statement - Exception: Where insurer does not have required historical data

An exception may apply if an insurer does not have information about deposits, withdrawals, growth or loss, or the owner's personal rate of return for dates before the Proposed Rule comes into force. The insurer will not be required to include this information in an owner's annual statement if the insurer:

- does not possess and cannot reasonably obtain the information,
- does include the information it can reasonably obtain in the annual statement,
- notifies the owner that the statement does not include certain information for the entire period from the date the IVIC began and specifies which information, and
- provides FSRA with certain information before the statement must be sent.

In this case, for each type of contract that is affected, the insurer will be required to provide FSRA with:

- the name of the contract,
- the number of these contracts that are affected,
- a description of the missing information,
- the identity of anyone who possesses it,
- any efforts the insurer has made to obtain it from these people, and
- an explanation if the insurer has not tried to obtain it from them.

The insurer must attest this information is true and that, to the best of the insurer's knowledge, the insurer does not possess the missing information and cannot obtain it using reasonable methods.

Note that this approach is different from the expectations in the Insurance Guidance. The Insurance Guidance specifies a process for insurers to apply for exemptions for exceptional circumstances in cases where an insurer can demonstrate that complying with an expectation will result in costs to policyholders that would exceed the benefit to the same policyholders.

FSRA does not have express statutory authority to provide exemptions from the proposed requirements in the Proposed Rule. However, FSRA recognizes that there are certain historical contracts where the insurer does not have the necessary data and is proposing a specific exception for these cases in the Proposed Rule.

Section 3: Calculating Fund Expenses

This section:

- explains how to calculate the amount of fund expenses for a segregated fund that are attributed to each owner's IVIC based on:
 - how many units of that segregated fund the owner held in the IVIC, and
 - when the owner held these units during the reporting period,
- explains how to calculate the fund expenses of a class or series of segregated fund for each day an owner held units of the class or series during the reporting period using:
 - the FER for the day for that class or series of the fund,
 - the market value for the day for a unit of that class or series, and
 - the number of these units the owner had in their IVIC that day,
- clarifies that an insurer may use a reasonable approximation of the FER and/or the market value per unit if the insurer reasonably believes that doing so would not result in reporting misleading information,
 - notes that one example of a situation where an approximation could involve misleading information would be where the insurer wanted to base the approximation on information published in the most recent fund facts document, but the insurer knows there has been a significant change to expenses since that information was calculated,
- clarifies that it is reasonable to approximate the FER for the day by dividing the segregated fund's FER in the most recent fund facts document or financial statement by the number of days in the year, unless the insurer knows something has happened since that FER was calculated that significantly changes the FER,
- explains that the total fund expenses the insurer will report for a contract is calculated by adding up the total of the dollar amount of the fund expenses allocated to the owner for each of the classes and series of segregated funds in which the owner invested in during the reporting period, and
- provides that insurers are not required to calculate and report the fund expenses of a segregated fund that was established less than 12 months prior to the statement date.

Section 4: Calculation of Trading Expense Ratio

This section:

- explains how to calculate the TER, and
- clarifies that if a segregated fund invests in a secondary fund, the insurer must calculate the TER following the same process as for the MER, but making reasonable assumptions or estimates where necessary.

Section 5: Calculation of Management Expense Ratio

This section:

- explains how to calculate the MER for each segregated fund or, where applicable, for each class or series of units available for the segregated fund,
- defines “any other fee, charge or expense” for the purposes of the MER calculation,
- clarifies that where a segregated fund has separate classes or series of units, an insurer must calculate the MER for each class or series by following same method as required for the MER, modified as appropriate,
 - for example, the insurer will use the average net asset value for that class or series of units in the segregated fund in this calculation, rather than the average net asset value for the fund as a whole, and
- provides that an insurer must annualize the MER of a segregated fund for a financial year of less than 12 months.

Section 6: Contact Information for Insurers and Agents

This section provides that the annual statement must contain information that is reasonably designed to enable an owner to contact,

- their insurer, and
- either
 - the agent who sold them the IVIC, or
 - another agent with adequate knowledge and expertise to provide suitable recommendations and advice about the owner’s IVIC.

The Proposed Rule provides that one appropriate way to help the owner reach the insurer is to include the insurer’s name, telephone number, mailing address and website in the statement.

The Proposed Rule also says that one appropriate way to help an owner to contact an agent is to include the relevant agent's name, telephone number, mailing address and email address in the statement.

Note that this approach is slightly different from the expectations in the Insurance Guidance. The Insurance Guidance specifies that the statement should include the insurer's name, telephone number, and website and the agent's name, telephone number and email address. FSRA recognizes that one valid way to ensure owners can reach the insurer and agent is to provide this information plus a mailing address for each. Other options may also be reasonable.

Section 7: Reminder to Contact Agent

This section requires insurers to remind customers each year of the importance of staying in touch with their agent. Insurers will be required to take reasonable steps to:

- invite owners to contact their agents,
- invite them to tell the agent about any significant changes in their circumstances,
- explain why it is important for the agents to have this information, and
- invite owners to review their IVICs, including how the contracts are structured and what investments they have made in their contracts, with their agents.

The structure of a contract includes who owns it, who the annuitant is, who will receive benefits when the annuitant dies and, if the contract will continue after an owner's death, who will become the owner then.

Schedule A – Minimum Content of Annual Statement

Schedule A of the Proposed Rule sets out the annual statement's minimum content.

At a high level, the annual statement must contain the following information.

General

- General information that identifies:
 - the contract,
 - the people involved (owners, annuitants, beneficiaries, etc.),
 - the contract's tax status (e.g., Registered Retirement Savings Plan),
 - the time period covered by the statement, and
 - how the owner can use the statement and find more information.

Contract-level performance

- Information about how the contract has performed, including personal rate of return for various time periods.

Contract-level cost of investing

- How much the owner has paid to invest in the contract over the past year, in dollars, including the amount paid for:
 - each fee under the contract, and
 - the total of all fees.
- Any legally-permitted changes to the insurance fee under the contract.
- Certain information in plain language about the fees and charges under the contract, how they were calculated, how they affect performance, how they affect the amount the owner can withdraw from the contract, and where to find further information.

Fund-level details

- Certain details about each segregated fund the owner invested in during the year, including:
 - how much the owner had invested in the segregated fund at the start and end of the year, together with details of total deposits, withdrawals, and other growth/loss for the year,
 - the FER for the segregated fund, unless the fund is less than 12 months old, and
 - the fact that a deferred sales charge applies to the owner's units, if applicable.

Guarantees

- Information regarding guarantees under the IVIC, such as:
 - for the IVIC as a whole as of the statement date,
 - the market value of the segregated funds subject to the guarantee,
 - the maturity date of the guarantee for the IVIC as a whole,
 - the dollar value guaranteed on the IVIC maturity date,
 - the dollar value guaranteed on death of the annuitant(s), and
 - if the IVIC has an automatic reset provision, the date of the next automatic reset and an explanation of the impacts of an automatic reset on the value of the guarantees.

Guaranteed Withdrawal Benefits

- If the contract offers the owner the right to make guaranteed withdrawals based on certain predetermined calculations, the annual statement will contain additional information about these benefits.
- The information required will depend on what phase the contract is in, as described below.
- Under some contracts, one part of the owner's investment may be in a different phase than another part; in that case, the insurer will be required to report relevant information separately for each.

- **Accumulation phase:** In this phase, the owner is accumulating funds in the contract and has not started making guaranteed withdrawals, and the statement will explain:
 - when the owner can start making these withdrawals,
 - the amount of these payments available starting on various dates,
 - assumptions used in calculating these values, and
 - certain steps the owner may take that could change the guaranteed amounts.

- **Withdrawal phase:** In this phase, the owner has started making guaranteed withdrawals from the contract, and there is still money invested in the contract. The statement will explain:
 - what the guaranteed annual withdrawal amount is,
 - how long it will be paid, assuming the owner does not make any other withdrawals,
 - how other withdrawals will affect it,
 - what the owner has chosen to withdraw annually, if different from the guaranteed withdrawal amount, and
 - how legally required maximum and minimum withdrawals under tax law will apply, if applicable (e.g. where the contract is registered as a restricted life income fund).

- **Benefits phase:** In this phase, the guaranteed payments made under this benefit have used up all of the money in the contract, but the insurer is still required to make the guaranteed payments. The statement will explain:
 - what the guaranteed annual payment amount is, and
 - how long it will be paid.

Alternatives Considered

FSRA intends to create a detailed Proposed Rule that is harmonized with the Insurance Guidance, to the extent permitted by FSRA's legal authority, with minor changes with respect to wording and provision of contact information and the introduction of exceptions where it would not be in customers' interest to require full compliance with the Insurance Guidance.

FSRA considered the following alternatives to this approach.

1. High Level Rule and Interpretation Guidance

FSRA considered proposing a rule that implemented the Insurance Guidance exclusively through principles-based and outcomes-focused provisions. This means that the rule would not contain prescriptive provisions. Instead, the rule would contain general principles; the prescriptive details of the Insurance Guidance, such as the minimum annual statement content and prescribed calculations, would be contained in FSRA guidance that would interpret the rule's provisions.

FSRA is not pursuing this approach because in this situation,

- the intended outcome is best achieved through a consistent metric that can be measured in an objective manner without creating unintended consequences,
- a consistent industry approach is required to allow customers to compare products, and
- a consistent detailed approach is required to reduce overall cost and effort of compliance for the industry, particularly because these costs may be passed on to customers.

The Proposed Rule is based on the Insurance Guidance, which contains detailed and precise definitions and calculations. These concepts have already been closely reviewed and refined by regulators and stakeholders who commented on related consultations. The Insurance Guidance is consistent with the approach the CSA has taken in the Securities Amendments.

Customers should be able to easily compare what they pay to invest in one segregated fund versus another this will help them to make better investment decisions. To achieve this goal, insurers must use the same methods to calculate relevant costs, and the approach should be consistent nationally. If the Insurance Guidance's expectations were contained in both a high level rule and guidance, there is a risk that insurers may interpret Ontario's requirements inconsistently.

Reducing costs of compliance will benefit customers because, under most IVICs, insurers can pass these costs on to people who own the contracts.

2. Proposed Rule as Published, but with Additional Exceptions

FSRA is aware that some insurers have identified additional circumstances where they believe complying with a proposed requirement will result in costs to customers that would exceed the benefit to the same customers, and in particular in relation to system changes.

Industry stakeholders have noted that enabling insurers to restart the reporting with respect to deposits, withdrawals, growth/loss and personal rate of return on the most recent date when the tax status or ownership/nominee changed would align how reporting is done with mutual funds, thereby enabling customers to more easily compare IVICs to mutual funds and reduce the overall costs of compliance which minimizes costs passed on to customers.

FSRA is seeking feedback to consider if additional exceptions in the Proposed Rule are appropriate. See "Consultation Questions" section below.

Forbearance

The Insurance Guidance includes a process under which insurers may request an exemption from some or all of the Insurance Guidance where the costs to customers of compliance would exceed the benefits they would receive. However, FSRA does not have express statutory authority to grant exemptions from the proposed requirements of the Proposed Rule.

To the extent that there are situations where the proposed requirements under the Proposed Rule would result in the benefit to customers being outweighed by the costs to them, FSRA retains regulatory discretion and can consider whether formal forbearance from compliance with the Rule is appropriate in the circumstances. For example, FSRA might agree to refrain from imposing compliance requirements⁴ against an insurer that is unable to comply with the Proposed Rule, or unable to comply with the Proposed Rule without passing on unreasonable costs to customers. In such circumstances, FSRA might require the insurer to commit to another form of disclosure that would achieve the intended regulatory outcomes in a manner consistent with fair treatment of customers.

Authority for Proposed Rule

S. 21(1) of the *FSRA Act* permits FSRA to make rules in respect of any matter over which a statute provides FSRA with rulemaking authority.

If proclaimed into force, clause (11.1) of s. 121.0.1(1) of the Act⁵ would provide FSRA with the authority to make a rule governing the conduct of insurers and agents with respect to the design, marketing, sale, issuance and administration of variable insurance contracts (the “**IVIC Rulemaking Authority**”), including over the following matters,

- prescribing the form and content of variable insurance contracts,
- prescribing the form, content, time of filing and delivery of information folders and the persons to whom information folders shall be delivered,
- the furnishing of information by an insurer or agent thereof to prospective purchasers of variable insurance contracts, and
- prescribing the documents, reports, statements, agreements and other information required to be filed, furnished or delivered under s. 110, and the form and content thereof.

As the IVIC Rulemaking Authority allows FSRA to make a rule with respect to the ‘administration’ of IVICs, this rulemaking authority provides FSRA with the authority to make the Proposed Rule.

Unpublished Materials

⁴ Per *Insurance Act*, s. 441(1) and 448(1).

⁵ Please note that clause (v) of the IVIC Rulemaking Authority has been proclaimed into force and permits FSRA to make a rule governing what constitutes an IVIC.

FSRA has not relied on any significant unpublished, study, report, decision or other written material with respect to the Proposed Rule.

Anticipated Costs and Benefits

Costs

Insurers that currently sell IVICs, and those who insure IVICs that are no longer available for sale, would incur costs to comply with the Proposed Rule. These costs may include costs associated with:

- reviewing the Proposed Rule and assessing its application to the insurer's IVICs,
- updating the insurer's internal computer systems,
- paying service providers to update third party computer systems, such as FundServ, and
- creating job aids for staff and agents and training them on the new ongoing disclosure that will be available to customers.

FSRA anticipates that the cost of updating computer systems will be significant, because the Proposed Rule will require insurers to track, calculate and report information not previously legally required, necessitating material systems enhancements.

Insurers may, under the terms of their IVICs, pass some or all of these costs along to customers.

FSRA recognizes that certain older IVICs may be administered through a combination of manual administrative processes and older automated processes ("legacy systems") that may not be easily modified. The costs of updating these processes to comply with the Proposed Rule may be disproportionate, compared to the costs for IVICs that are not administered on legacy systems and, in some cases, compared to the benefits the Proposed Rule will provide to owners of IVICs administered on legacy systems.

As noted above, some industry stakeholders have identified additional circumstances where they believe complying with a proposed requirement will result in costs to customers that would exceed the benefit to the same customer. FSRA is seeking feedback to consider additional exceptions in those circumstances, and if appropriate, how they could be addressed in the Proposed Rule. See "Consultation Questions" section below.

Benefits

If customers receive complete and transparent information about the ongoing costs of investing in segregated funds within IVICs, they will be able to make better-informed decisions that will ultimately result in better customer outcomes.

Costs have a significant impact on performance and this impact adds up over time. Customers need to be aware of the costs they pay and understand them in order to assess them in comparison to the value they receive in return and to make informed decisions.

Balance of Costs and Benefits

While the cost of complying with the Insurance Guidance, and therefore the Proposed Rule, will be significant it is important to consider this cost in context. The cost should be assessed in light of the number of customers affected and the amount they have invested in the relevant segregated funds. It is also important to consider that, in many cases, insurers use the same systems across the country and will be legally required to update these systems to comply with most elements of the Insurance Guidance.⁶ If different provinces were to implement different requirements for Total Cost Reporting, then the overall costs of implementation might be higher than if they were harmonized. For this reason, a FSRA Rule that implements requirements that are as similar as possible to the other provinces' requirements is desirable and should save money overall.

Approximately 3 million Canadians invest in segregated funds through IVICs.⁷ As of June 2023, approximately \$130.4 billion was invested in these segregated funds,⁸ with approximately \$50 billion of that amount invested in Ontario.⁹ Although FSRA has not received estimates of the total cost of implementing the Proposed Rule, FSRA expects that this cost will be spread among all customers across Canada. FSRA believes that, in most cases, the benefits of the new disclosure to individual customers will outweigh the costs these customers pay.

Consultation Questions

While FSRA has built flexibility into the Rule, there may be other circumstances in which it will not benefit customers for insurers to fully comply with it. As FSRA does not have express statutory authority to provide exemptions from the proposed requirements in the Proposed Rule, FSRA is seeking feedback to consider if additional exceptions are appropriate in common scenarios where it would not be in a customers' best interest to require full compliance. Although FSRA can choose not to take action against insurers who fail to comply with requirements in the rule, that does not eliminate those requirements. Other parties could still take action against the insurers based on the

⁶ See Quebec's draft [Regulation Respecting Information to be Provided to Holders of Individual Variable Insurance Contracts Relating to Segregated Funds](#), published for consultation by the Autorité des marchés financiers on November 2, 2023.

⁷ Letter from the Canadian Life and Health Insurance Association to the Canadian Council of Insurance Regulators (CCIR), November 7, 2022, page 9. The letter is found within the responses to CCIR's consultation paper on upfront compensation on IVICs; the responses are published [here](#).

⁸ Investor Economics "Insurance Report: Monthly/Quarterly Highlights" July 2023, page 1.

⁹ Investor Economics "Insurance Report: Semi-annual Segregated Fund Trends" September 2023, page 4 indicated that 39% of the \$130.4 billion of assets were invested in Ontario.

insurers' failure to comply with the requirements for which there is no exception or exemption.

In particular FSRA seeks feedback on the following:

- 1) Identify the different circumstances where full compliance with the Proposed Rule would not be in the customer's best interest and in particular, how it would result in costs to customers that would exceed the benefit to the same customers.
- 2) For each circumstance identified, provide information and supporting evidence to the following questions:
 - a) What are the anticipated the costs and challenges for full compliance with the Proposed Rule?
 - b) How would full compliance with the Proposed Rule impact different types customers (e.g., customers with only IVICs, customers with both IVIC and mutual funds)?
 - c) What is the anticipated frequency of each circumstance occurring?
 - d) How would full compliance with the Proposed Rule result in outcomes that are not in the best interest of the customer?
 - e) How would an exception be consistent with the fair treatment of customers?
 - f) How could these circumstance be addressed in the Proposed Rule?

Regulations to be Revoked or Amended

i. Revocation

With respect to the Proposed Rule's implementation, FSRA will recommend to the Minister that s. 7 of O. Reg. 132/97: Variable Insurance Contracts ("**O. Reg. 132/97**") be revoked. This subsection provides that it is an unfair or deceptive act or practice for an insurer to fail to give, in accordance with Guideline G2 – Individual Variable Insurance Contracts Relating to Segregated Funds ("**Guideline G2**"),

“the annual statement the insurer is required to give under Guideline G2 to each person to whom the insurer has issued a variable insurance contract.”

FSRA will also recommend to the Minister that RRO 1990, Regulation 677: Variable Insurance Contracts, Issued Before July 1, 1997, With Insurers No Longer Issuing Them ("**Reg. 677**") be revoked. Reg. 677 applies to IVICs issued prior to July 1, 1997 where the insurer no longer issues or offers to enter into them. For these IVICs, an insurer must provide an owner with an annual statement containing the information set out in s. 7(a)-(e) of Reg. 677.

Reg. 677 and s. 7 of O. Reg. 132/97 may be inconsistent or conflict¹⁰ with the Proposed Rule, as they provide for annual statements that differ from the annual statement under the Proposed Rule. In light of this potential conflict or inconsistency, FSRA's rationale for recommending that s. 7 of O. Reg. 132/97 and Reg. 677 be revoked is to prevent them from prevailing over the Proposed Rule. This will ensure that owners receive the benefit of the enhanced cost disclosure and product performance information under the Proposed Rule's annual statement.

FSRA will also recommend that consequential amendments be made to O. Reg. 408/12: Administrative Penalties, so that the breaches of the Proposed Rule would be subject to administrative monetary penalties.

Proposed Rule

Please refer to Appendix A for the Proposed Rule.

¹⁰ S. 121.0.1(6) of the Act provides that if there is a conflict or inconsistency between a regulation made under the Act and a FSRA Rule, the regulation prevails, but in all other respects a FSRA Rule has the same force and effect as a regulation.

Appendix A

Rule 2024 – 002 Total Cost Reporting

Rule 2024 – 002 - Total Cost Reporting

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “accumulation phase” means the time between the date an insured begins making deposits to an individual variable insurance contract that provides a guaranteed withdrawal benefit and the date the insured notifies the insurer the insured wants to begin receiving such guaranteed payments under the individual variable insurance contract, or otherwise triggers the commencement of such payments,
- (iii) “advisory service fee” means any fee payable by an insured to an agent with respect to an individual variable insurance contract, that is paid by an insurer to the agent on direction of the insured from assets within the individual variable insurance contract,
- (iv) “annuitant” means a person whose life triggers any guarantee on death or maturity of the individual variable insurance contract or any payment for life under an individual variable insurance contract,
- (v) “benefits phase” means the time between the date when the withdrawal phase ends for all or part of an individual variable insurance contract that provides a guaranteed withdrawal benefit and the last date a guaranteed withdrawal benefit is payable,
- (vi) “customer fees and charges” means, for the purpose of Schedule A,
 - (a) any sales charges, distribution fees, management fees, administrative fees, account set-up or closing charges, surrender charges, transfer fees or insurance fees, and
 - (b) any other fees, charges or expenses whether or not contingent or deferred which are or may be payable by an insured in connection with the acquisition, holding, transferring or withdrawal of units of a segregated fund credited to an individual variable insurance contract,
- (vii) “fee option” means any option available to an insured under an individual variable insurance contract which results in there being more than one set of customer fees and charges applicable in respect of a segregated fund,
- (viii) “fund expense ratio” means the sum of a segregated fund’s management expense ratio and trading expense ratio, expressed as a percentage,

- (ix) “fund expense ratio for the day” means the ratio, expressed as a percentage, of the amount of fund expenses of a class or series of a segregated fund for the day to the net asset value of the class or series of the segregated fund for the day,
- (x) “fund expenses” means all of a segregated fund’s expenses that are paid out of assets of the segregated fund, including management expenses and trading expenses,
- (xi) “fund facts” means a disclosure document, for each segregated fund available under an individual variable insurance contract, which forms part of the information folder referred to in s. 110(2) of the Act,
- (xii) “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,
- (xiii) “insurer’s name” means an insurer’s full legal name,
- (xiv) “investment option” in connection with an individual variable insurance contract means each segregated fund offered for investment under the individual variable insurance contract and any other investment offered under the individual variable insurance contract, including a guaranteed interest investment,
- (xv) “individual variable insurance contract structure” with respect to an insured’s individual variable insurance contract means how the individual variable insurance contract is structured, including the individual variable insurance contract’s,
 - (a) ownership structure, including,
 - (1) whether there is one insured or more than one, and
 - (2) if there is more than one insured,
 - 1. the respective rights of the insureds while the insureds are alive, and
 - 2. the rights surviving insureds will have when one insured dies, and
 - (3) designation of successor insureds under s. 199 of the Act, if applicable,
 - (b) beneficiaries, and successor annuitants or successor holders, if applicable,

- (c) annuitant or annuitants upon whose death the individual variable insurance contract will end, and
- (d) measuring life or lives where benefits under the individual variable insurance contract are available as long as one of the measuring lives are alive, if applicable,
- (xvi) “management expense ratio” means the ratio, expressed as a percentage, of the management expenses of a segregated fund to the segregated fund’s average daily net asset value for a financial year, as calculated under s. 5,
- (xvii) “management expenses” means a segregated fund’s management fees, operating and other administration expenses, including those of any secondary fund, and all taxes other than income taxes but excluding trading expenses. Management fees are net of any fees or expenses waived,
- (xviii) “material change to customer information” means a change in information about an insured that could result in a change in the insured’s needs or the recommendations or advice provided to the insured, or should reasonably cause an agent to question whether all of the following continue to meet the insured’s needs,
 - (a) the insured’s individual variable insurance contract,
 - (b) the individual variable insurance contract structure, and
 - (c) the insured’s investments in the individual variable insurance contract,
- (xix) “net asset value” means the value of the total assets of a segregated fund less the value of the segregated fund’s total liabilities, other than net assets attributable to insureds who have invested in the segregated fund, as at a specific date and calculated by,
 - (a) using the fair value of the segregated fund’s assets and liabilities, and
 - (b) including the income and expenses of the investment fund accrued up to the date of calculation of the net asset value,
- (xx) “secondary fund” means a segregated fund, a mutual fund or other investment fund, limited partnership or income trust, including an index participation unit, in which a segregated fund may invest,
- (xxi) “segregated fund” has the same meaning as in s. 110(1) of the Act,
- (xxii) “statement date” means the date of the last day of the period covered by the statement,

- (xxiii) “trading expense ratio” means the ratio, expressed as a percentage, of the trading expenses of a segregated fund to the segregated fund’s average daily net asset value for the financial year, as calculated under s. 4,
- (xxiv) “trading expenses” means the total commissions and other portfolio transaction costs paid or payable by an insurer from the assets of a segregated fund on the purchase and sale of the segregated fund’s assets, including those of any secondary fund, and
- (xxv) “withdrawal phase” means the time between,
- (a) the date an insured triggers the guaranteed withdrawal benefit under an individual variable insurance contract that provides such benefit, and
 - (b) the date when there is no longer enough money held within the individual variable insurance contract to pay a scheduled withdrawal.
- 1(2) In addition to s. 1(1), if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purpose of this Rule.
- 1(3) For the purpose of this Rule, fair value shall be calculated as follows,
- (i) if reported prices and/or quotations for the market value are available in an active market, and the manager of the investment fund does not reasonably believe that the market value based on these prices and/or quotations is unreliable, then the fair value shall be the market value based on reported prices and/or quotations, and
 - (ii) otherwise, the fair value shall be a value that is fair and reasonable in all the relevant circumstances.
- 1(4) For the purpose of this Rule, market value of the units of a segregated fund in an individual variable insurance contract shall be calculated by taking the number of fund units within the individual variable insurance contract and multiplying such number by the market value per unit at the end of the date for which the market value is calculated.

2 Annual Statement to Insured

- 2(1) An insurer shall provide to an insured with respect to each individual variable insurance contract, within four months of each fiscal year end of the segregated funds within the individual variable insurance contract, a statement showing the information described in Schedule A.
- 2(2) Despite s. 2(1), an insurer is not required to provide an insured with information with respect to an individual variable insurance contract for time periods before this Rule comes into force if the insurer,

- (i) does not possess and cannot, with reasonable efforts, obtain the information,
- (ii) provides the information for any period for which the insurer possesses or can reasonably obtain the information,
- (iii) notifies the insured that the statement does not include certain information for the entire period from the date the individual variable insurance contract began and specifies which information, and
- (iv) prior to the date the insurer is required to provide the insured with the statement described in s. 2(1),
 - (a) makes reasonable efforts, if any are available, to obtain the information for the entire period since the individual variable insurance contract began, and
 - (b) files a document with the Authority which contains at a minimum the following information for each such individual variable insurance contract,
 - (1) the name of the contract,
 - (2) the number of such contracts for which the insurer is unable to provide the information,
 - (3) the information which the insurer does not possess and cannot, with reasonable efforts, obtain,
 - (4) the identity of any person who does possess any such information,
 - (5) the efforts the insurer made to obtain the information from such person(s), if the insurer has made any effort,
 - (6) if the insurer has not made any effort to obtain the information from one or more of these persons, why the insurer does not consider it reasonable to do so, and
 - (7) an attestation stating the information in clauses (1)-(6) is true and complete, and that to the best of the insurer's knowledge, the insurer does not possess and cannot reasonably obtain the information.

3 Calculating Fund Expenses

- 3(1) An insurer must calculate and report the amount of a segregated fund's fund expenses allocated to an individual variable insurance contract based on,
 - (i) how many segregated fund units an insured held in the individual variable insurance contract, and

- (ii) when the insured held the segregated fund units during the reporting period.
- 3(2) An insurer must use the following formula to calculate the fund expenses of an applicable class or series of segregated fund for each day an insured held units of the applicable class or series of the segregated fund during the reporting period, making any adjustments reasonably necessary to accurately determine fund expenses attributed to the insured,

$$A \times B \times C$$

- A= the fund expense ratio for the day of the applicable class or series of the segregated fund,
- B= the market value of a unit for the day of the applicable class or series of the segregated fund, and
- C= the number of segregated fund units within the insured's individual variable insurance contract for the day.
- 3(3) For the purpose of s. 3(2), an insurer may use a reasonable approximation of the fund calculation inputs "A" and "B" provided the insurer reasonably believes that doing so would not result in reporting misleading information to an insured.
- 3(4) For greater clarity, a reasonable approximation may include estimating the fund expense ratio for the day by dividing the segregated fund's fund expense ratio in the most recent fund facts document or financial statement by the number of days in the year unless the insurer knows there has been an event which resulted in a significant change to the fund expense ratio since the document was published.
- 3(5) For reporting an insured's fund expenses under s. 3(i) of Schedule A, an insurer must repeat the calculation under s. 3(2) for each class or series of segregated fund which the insured held units of during the reporting period and aggregate the results.
- 3(6) An insurer is not required to calculate and report the fund expenses of a segregated fund which was established less than 12 months before the statement date.

4 Calculation of Trading Expense Ratio

- 4(1) An insurer must calculate the trading expense ratio of a segregated fund for any financial year by,
- (i) dividing
- (a) the total commissions and other portfolio transaction costs before income taxes, for the financial year as shown on the segregated fund's statement of comprehensive income,

by

(b) the same denominator as is used to calculate the management expense ratio under s. 5, and

(ii) multiplying the result obtained under s. 4(1)(i) by 100.

4(2) If a segregated fund invests in a secondary fund, an insurer must calculate the trading expense ratio using the methodology required for the calculation of the management expense ratio, making reasonable assumptions or estimates where necessary.

5 Calculation of Management Expense Ratio

5(1) An insurer must calculate the management expense ratio of a segregated fund applicable to a particular fee option under an individual variable insurance contract for any financial year by,

(i) dividing

(a) the aggregate of,

(1) total expenses of the segregated fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year as shown on the segregated fund's statement of comprehensive income, and

(2) any other fee, charge or expense of the segregated fund that has the effect of reducing the segregated fund's net asset value,

by

(b) the average net asset value of the segregated fund for the financial year obtained by,

(1) adding together the net asset value of the segregated fund as at the close of business of the segregated fund on each day during the financial year on which the net asset value of the segregated fund has been calculated, and

(2) dividing the amount obtained under s. 5(1)(i)(b)(1) by the number of days during the financial year on which the net asset value of the segregated fund has been calculated, and

- (ii) multiplying the result obtained under s. 5(1)(i) by 100.
- 5(2) For the purpose of this section, “any other fee, charge or expense” means all fees, charges and expenses paid or payable by the segregated fund and all expenses incurred in the ordinary course of business relating to the organization, management and operation of the segregated fund including interest charges, if applicable, and all taxes other than income taxes but excluding commissions and brokerage fees on the purchase and sale of portfolio securities.
- 5(3) Where a segregated fund has separate classes or series of units, an insurer must calculate a management expense ratio for each class or series of units in the manner required by this section, modified as appropriate.
- 5(4) An insurer must annualize the management expense ratio of a segregated fund for a financial year of less than 12 months.

6 Contact Information for Insurers and Agents

- 6(1) The statement referred to in s. 2(1) must contain information that is reasonably designed to enable an insured to contact,
- (i) the insurer, and
 - (ii) either
 - (a) the agent who sold the individual variable insurance contract to the insured, or
 - (b) another agent with sufficient knowledge and expertise to provide suitable recommendations and advice to the insured with respect to the insured’s individual variable insurance contract.
- 6(2) For the purpose of s. 6(1)(i), one way to reasonably design information to enable the insured to contact the insurer is to include in the statement the insurer’s,
- (i) name,
 - (ii) telephone number,
 - (iii) mailing address, and
 - (iv) website.
- 6(3) For the purpose of s. 6(1)(ii), one way to reasonably design information to enable the insured to contact the agent is to include in the statement the agent’s,
- (i) name,
 - (ii) telephone number,

- (iii) mailing address, and
- (iv) email address.

7 Reminder to Contact Agent Periodically

- 7(1) With respect to each individual variable insurance contract it insures, each insurer must, on an annual basis, take reasonable steps to,
- (i) invite each insured to contact the agent referred to in s. 6(1)(ii) and update the agent about any material change in customer information since the last time the insured provided information to the agent,
 - (ii) explain why it is important for the agent to have up-to-date information about each insured, and
 - (iii) invite each insured to review the following and discuss any proposed changes with the agent,
 - (a) the individual variable insurance contract,
 - (b) the individual variable insurance contract structure, and
 - (c) the investments the insured has made in the individual variable insurance contract.
- 7(2) For the purpose of s. 7(1), one way an insurer can take the reasonable steps required is to include the elements of s. 7(1)(i)-(iii) in the statement described in s. 2(1).

8 Coming Into Force

- 8(1) This Rule comes into force on the later of the date that clause 11.1 of s. 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

Schedule A – Minimum Content of Annual Statement

1) General

- (i) Statement date,
- (ii) The following information about the individual variable insurance contract:
 - (a) Individual variable insurance contract name,
 - (b) Individual variable insurance contract tax status,
 - (c) Individual variable insurance contract number, and
 - (d) When the individual variable insurance contract began,
- (iii) Insured(s),
- (iv) Annuitant(s),
- (v) Designated beneficiary(ies),
- (vi) A notice in plain language to:
 - (a) Remind insured(s) that the information contained in the statement will help the insured track the insured's financial goals,
 - (b) Remind insured(s) that the insured can obtain copies of the most recent fund facts associated with the individual variable insurance contract, annual audited financial statements and semi-annual unaudited financial statements for each segregated fund and how to obtain such contract and statements, and
 - (c) Invite insured(s) to contact the insured's agent or the insurer if the insured needs additional information.

2) Performance – Contract

- (i) For the individual variable insurance contract as a whole, the market value at the start of the year and at the statement date,
- (ii) For the individual variable insurance contract as a whole, as of the statement date, the total deposits:
 - (a) Since the individual variable insurance contract began, and
 - (b) Since the start of the year,
- (iii) For the individual variable insurance contract as a whole, as of the statement date, total withdrawals:
 - (a) Since the individual variable insurance contract began, and
 - (b) Since the start of the year,
- (iv) For the individual variable insurance contract as a whole, as of the statement date, the change in value of investments in the individual variable insurance contract for reasons other than deposits to or withdrawals from the individual variable insurance contract:
 - (a) Since the individual variable insurance contract began, and
 - (b) Since the start of the year,
- (v) Personal rate of return, as a percentage, calculated on the dollar-weighted method for the individual variable insurance contract as a whole:
 - (a) Since the individual variable insurance contract began, and
 - (b) Where the individual variable insurance contract has been in effect for the relevant time:

- (1) For the 10 years ending on the statement date,
- (2) For the 5 years ending on the statement date,
- (3) For the 3 years ending on the statement date, and
- (4) For the year ending on the statement date, and
- (vi) A plain language explanation that the personal rate of return may be different than the rate realized by the segregated funds within the individual variable insurance contract because calculation of personal rate of return depends on factors such as timing of deposits and withdrawals.

3) Customer Fees and Charges – Contract

- (i) For the individual variable insurance contract as a whole, the dollar amount the insured incurred during the year for each of the following,
 - (a) Fund expenses,
 - (b) Front end load charges,
 - (c) Deferred sales charges,
 - (d) Advisory service fee,
 - (e) Withdrawals fees
 - (f) Transfer fees,
 - (g) Reset fees,
 - (h) Early withdrawal and/or short term trading fee,
 - (i) Fees with respect to cheques returned due to insufficient funds,
 - (j) Small policy fee,
 - (k) Insurance fees not paid by the insurer from the assets of a segregated fund, and
 - (l) Any other customer fees and charges deducted from the individual variable insurance contract.
- (ii) For greater clarity, the insurer is not required to include a fee or charge under s. 3(i)(a)-(l) of Schedule A if the dollar amount the insured incurred for such fee or charge in the year is zero.
- (iii) For the individual variable insurance contract as a whole, the dollar amount of the total of the items listed in s. 3(i) of Schedule A ,
- (iv) Any changes to the insurance fee, where legally permitted,
- (v) A plain language explanation that any customer fees and charges the insured pays directly to the agent, if applicable, are not included in the amount in s. 3(iii) of Schedule A, and
- (vi) Plain language explanations of:
 - (a) How customer fees and charges affect returns,
 - (b) The actions an insured can take regarding the customer fees and charges information in the statement,
 - (c) The fact approximations have been used when calculating fund expenses, if applicable, and
 - (d) The fact an insured can look at the fund facts document for more information about customer fees and charges, including fund expenses.
- (vii) Where applicable, a notice in plain language:

- (a) Explaining that the total market value of the individual variable insurance contract is not necessarily the amount the insured will receive if the insured ends the insured's individual variable insurance contract,
 - (b) Explaining how the insured can get more details about the amount of money the insured would receive if the insured ended the insured's individual variable insurance contract, and
 - (c) If the costs the insured would incur if the insured withdrew the total market value of the individual variable insurance contract are significant, explaining the costs of withdrawing the total market value of the individual variable insurance contract in enough detail to allow the insured to understand the effect of such costs.
- (viii) For greater clarity, the disclosure explicitly required under this Rule with respect to deferred sales charges is sufficient to address item s. 3(vii)(c) of Schedule A regarding deferred sales charges.

4) Segregated Fund details – Value, Fund Expense Ratio, Deferred Sales Charges

- (i) For each segregated fund held within the individual variable insurance contract during the year described by the statement:
 - (a) The segregated fund name,
 - (b) Market value of the insured's units in the segregated fund at start of year,
 - (c) Since the start of the year:
 - (1) Total deposits into the segregated fund,
 - (2) Total withdrawals from the segregated fund, and
 - (3) The change in value of investments in the segregated fund for reasons other than deposits or withdrawals,
 - (d) As of the statement date:
 - (1) Number of segregated fund units held,
 - (2) Market value per segregated fund unit, and
 - (3) Total market value of segregated fund units held,
 - (e) The fund expense ratio for the fund,
 - (f) The fact that a deferred sales charge applies, if applicable, and
 - (g) The fact that no fund expense ratio is provided for a segregated fund because the segregated fund was established less than 12 months before the statement date, if applicable.
- (ii) A plain language explanation of:
 - (a) What the fund expense ratio is, and
 - (b) The fact that the dollar amount of the fund expenses allocated to the individual variable insurance contract are included in the details of the charges for the individual variable insurance contract for the year.

5) Guarantees

- (i) For the individual variable insurance contract as a whole as of the statement date:
 - (a) The market value of the insured's units in the segregated funds subject to the guarantee under the individual variable insurance contract,

- (b) The maturity date of the guarantee of the individual variable insurance contract as a whole,
 - (c) The dollar value guaranteed on the individual variable insurance contract maturity date, and
 - (d) The dollar value guaranteed on death of the annuitant(s).
- (ii) For greater clarity, if the individual variable insurance contract has more than one maturity date, the insurer is only required to provide the information under s. 5(i)(a)-(c) of Schedule A for the maturity guarantee of the individual variable insurance contract as a whole, not for each separate deposit.
- (iii) If the individual variable insurance contract has an automatic reset provision, the date of the next automatic reset and an explanation of the impacts of an automatic reset on the values of the guarantees.

6) Guarantees – Contracts with guaranteed withdrawals

Accumulation Phase

- (i) If the individual variable insurance contract provides a guaranteed withdrawal benefit and all or part of the individual variable insurance contract is in the accumulation phase, the following information with respect to the assets in the accumulation phase:
- (a) The annual guaranteed withdrawal amount for every withdrawal option available to the insured under the individual variable insurance contract at:
 - (1) The earliest age at which the insured can begin receiving guaranteed withdrawals,
 - (2) Age 65, if applicable, and
 - (3) Age 70, if applicable,
 - (b) A notice in plain language that the guaranteed amounts have been calculated assuming,
 - (1) The insured will make no further deposits to the individual variable insurance contract,
 - (2) The insured will make no withdrawal from the individual variable insurance contract, aside from the guaranteed withdrawals,
 - (3) The value of the units in the individual variable insurance contract will not change between the date of calculation and the dates for which guaranteed withdrawal amounts are shown,
 - (4) That no bonuses will be credited to the individual variable insurance contract, if applicable, between the date of calculation and the dates for which guaranteed withdrawal amounts are shown, and
 - (5) That the insured will not reset any guarantees under the individual variable insurance contract, if applicable, between the date of calculation and the dates for which guaranteed withdrawal amounts are shown,
 - (c) A notice in plain language explaining how guarantees are affected by withdrawals, and

- (d) If applicable, a notice in plain language to remind the insured of the insured's ability to make discretionary resets of the guarantees under the individual variable insurance contract.

Withdrawal Phase

- (ii) If the individual variable insurance contract provides a guaranteed withdrawal benefit and all or part of the individual variable insurance contract is in the withdrawal phase, the following information with respect to the assets in the withdrawal phase:
 - (a) The guaranteed annual withdrawal amount,
 - (b) How long the guaranteed annual withdrawal amount will be payable, assuming the insured does not make any withdrawals other than the scheduled withdrawals,
 - (c) The amount the insured has chosen to receive annually, if different from the guaranteed annual withdrawal amount,
 - (d) If the individual variable insurance contract is a registered retirement income fund, life income fund, locked-in retirement income fund or restricted life income fund, the minimum registered retirement income, life income fund, locked-in retirement income fund or restricted life income fund withdrawal for the year following the statement date,
 - (e) If the individual variable insurance contract is a life income fund, locked-in retirement income fund or restricted life income fund, the maximum life income fund, locked in retirement income fund or restricted life income fund withdrawal for the year following the statement date,
 - (f) A notice that any withdrawals that exceed the guaranteed annual withdrawal amount will decrease future guaranteed withdrawal amounts, except if required with respect to a registered retirement income fund, life income fund, locked in retirement income fund or restricted life income fund minimum withdrawals, and
 - (g) A notice in plain language explaining the guaranteed withdrawal amount will be payable to the insured even if the market value of the relevant assets in the individual variable insurance contract is less than the guaranteed withdrawal amount.

Benefits Phase

- (iii) If the individual variable insurance contract provides a guaranteed withdrawal benefit and all or part of the individual variable insurance contract is in the benefits phase, the following information with respect to the portion of the individual variable insurance contract in the benefits phase:
 - (a) The guaranteed annual benefit amount, and
 - (b) How long the withdrawal amount is guaranteed to be payable.