

# CONSUMER ADVISORY PANEL

February 21, 2023

*Delivered electronically*

Financial Services Regulatory Authority of Ontario  
25 Sheppard Ave W, Suite 100  
Toronto, ON  
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## **Re: Deferred Sales Charges Consultation**

The Consumer Advisory Panel (the Panel) welcomes this opportunity to participate in the public consultation regarding proposed amendments to the Unfair or Deceptive Acts or Practices (UDAP) Rule related to deferred sales charges on segregated fund contracts.

The Panel provides a consumer perspective on proposed Financial Services Regulatory Authority of Ontario (FSRA) policy changes. More information about the Panel, its terms of reference and its members are available on the [FSRA website](#).

The Panel appreciates FSRA's interest in receiving input from a consumer perspective regarding these proposed amendments. In fall 2022 FSRA staff invited interested members of the Panel to meet and discuss the proposed amendments, as well as related projects regarding upfront compensation in segregated fund contracts currently being undertaken through national coordination bodies. FSRA staff and a small group of Panel members met on November 29, 2022 and again on January 30, 2023.

This letter sets out the Panel's:

- support for Canadian regulators' ongoing work related to upfront compensation in segregated fund contracts and encouragement that the resulting reforms will promote better experiences and outcomes for consumers;
- enthusiastic support for the elimination of Deferred Sales Charges (DSCs) on segregated fund sales; and
- cautionary considerations with regard to the regulatory approach FSRA is planning to implement for existing segregated fund contracts that require DSC payments going forward.

### *Ongoing Work Related to Upfront Compensation*

Work is underway through the Canadian Council of Insurance Regulators (CCIR) and Canadian Insurance Services Regulatory Organizations (CISRO) to review

compensation arrangements in segregated fund contracts. The Panel supports this work and encourages FSRA to take a leadership role in developing a national position that prioritizes:

- what is in the best interest of consumers,
- the suitability of products sold and advice provided to consumers; and
- new rules and procedures designed to eliminate/mitigate conflicts of interest, including ethical training.

The Panel looks forward to continuing to provide input regarding the direction of this important work.

### *Eliminating DSCs*

At the same time that it is participating in the broader ongoing work related to upfront compensation in segregated fund contracts, FSRA is also proposing an amendment to its UDAP Rule that would prohibit insurers from issuing new individual segregated fund contracts with DSCs on or after June 1, 2023.

The implementation date of this amendment is designed to align with the CCIR / CISRO proposal to eliminate DSCs effective June 1, 2023. In addition to harmonizing with other Canadian insurance regulators, this amendment will also conform with the Canadian Securities Administrators (CSA) decision to eliminate DSCs on mutual funds that took effect on June 1, 2022. The Panel welcomes this harmonization that will eliminate the potential of regulatory arbitrage by enforcing similar regulations on segregated funds and mutual funds that, from the perspective of a consumer, offer very similar features.

The justifications for discontinuing Deferred Sales Charges (DSCs) are included in statements and discussion papers published by CCIR / CISRO and CSA. The Panel endorses the positions taken by these groups and supports the strict limitations on DSCs that FSRA has proposed through this amendment.

### *Existing Segregated Fund Contracts That Retain a DSC Option*

FSRA is proposing a second amendment to its UDAP Rule that is intended to protect customers that are required to make future deposits on a DSC basis for segregated funds contracted prior to June 1, 2023. This amendment relies primarily on disclosure to address potential consumer harms arising from these existing contracts with DSC options.

In many instances this well-intentioned disclosure will oblige a consumer to make choices from among a number of different sales charge options. It is not clear that all consumers will have the means and/or support to make the appropriate choices. In particular, consumers may not be provided with adequate or complete information about

options, they may no longer have access to expert advice because their advisor has left the business, or they may not receive or ignore the disclosure and be subject to the default option. Given the potential for these unintended consequences, the Panel does not consider disclosure alone as a satisfactory consumer remedy for contracts that retain DSC deposits post June 1, 2023.

For this reason, the Panel encourages FSRA to consider providing additional guidance with regard both the extent of the disclosure and the range of alternative deposit options permitted to ensure that consumers have the information they need in a timely manner to consider alternative sales charge options that will be unambiguously better than the DSC option. The Panel would specifically encourage FSRA to ensure that chargeback not be made available as an alternative option for DSC.

### *Conclusion*

Thank you for the opportunity to comment. The Panel looks forward to continuing to engage with, and support, FSRA in its work to protect the rights and interests of consumers in this area.

Sincerely,

Consumer Advisory Panel