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June 30, 2023

VIA EMAIL

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON
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**Re:** ***Consultation on updated proposed amendments to the Unfair or Deceptive Acts or Practices Rule* (the "Consultation")**

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following comments to the Financial Services Regulatory Authority of Ontario ("**FSRA**") on its Consultation dealing with the updated proposed amendments to the Unfair or Deceptive Acts or Practices Rule (the "**UDAP Rule**").

Consistent with our comments on the previous consultation conducted by FSRA relating to proposed amendments to the UDAP Rule and deferred sales charges ("**DSCs**"), we remain supportive of the amendments contained in the Consultation and would encourage their implementation at the earliest opportunity. However, we do not believe the collective amendments to the UDAP Rule go far enough to protect policy holders from unfair practices relating to sales charge options.

The updated proposed amendments represent a positive step toward encouraging insurers to apply a sales charge option which is "unequivocally better" for the insured than the DSC option in the case of individual variable insurance contracts which may remain subject to agreed-upon DSC fees going forward. We are supportive of the specific acknowledgement contained in the Consultation that an advisor chargeback sales charge option is <u>not</u> unequivocally better than a DSC.

Our views in response to the Consultation reiterate those expressed in our comments on FSRA's DSC consultation[2] as well as those provided in response to the CCIR and

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on LinkedIn and Twitter at @CFAInstitute.

[2] http://cfacanada.org/wp-content/uploads/2023/02/FSRA-UDAP-Rule-Deferred-Sales-Charges.pdf

CISRO's consultation[3] on upfront compensation structures in segregated funds. The CAC maintains the firm belief that all forms of upfront compensation structures, including advisor chargebacks, should be banned as soon as possible. We have and will continue to support the ban of such structures across the insurance and investment industry alike, to promote consistent standards and avoid regulatory arbitrage.

While we share the view expressed by CCIR and CISRO that advisor chargebacks pose a "risk of potential customer harm"[4], we do not believe the development of guidance or controls with respect to chargebacks is a suitable solution to deal with the conflict this fee structure poses, primarily because of our lack of faith in disclosure as an effective conflict mitigation tool, particularly where there are few effective controls at the point-of-advice to ensure this disclosure information is effectively delivered, explained and understood by the insured. **In our view, this further highlights the need for additional supervisory tools by FSRA over agent conduct, and the need for broader related rulemaking authority by FSRA.** This could help to build a more generally effective conduct supervisory mechanism within MGAs over their licensed agents, upon which FSRA and the public could make some greater reasonable reliance. Recent enforcement actions have highlighted the urgent need for broader rulemaking powers relating to agent conduct and MGA oversight obligations for FSRA. **We would strongly encourage FSRA to seek these expanded powers at the earliest opportunity, such that tools such as expanded disclosure obligations on agents could be a more effective regulatory solution to agent-customer conflicts, in a system with a wider set of effective conduct supervision structures and obligations.**

**We would encourage FSRA to expand on the acknowledgement in the Consultation that advisor chargebacks are not unequivocally better than DSCs by taking this opportunity to ban chargebacks altogether.** All upfront commission structures pose inherent conflicts of interest which are fundamentally irreconcilable with an advisor's obligation to provide unbiased advice influenced only by the needs and interests of the customer. The prospect of an advisor having to repay a (potentially substantial) upfront commission if a customer's personal circumstances dictating a reasonably advisable switch or redemption creates obvious and irresolvable conflict between the advisor's personal interests/compensation and those of the client/insured. Such conflicts are entirely antithetical to a healthy client-advisor relationship. We believe the advisor chargeback option, while potentially lightening the fee obligations imposed on a customer in the event of a product switch (relative to a DSC option), compounds rather than addresses the conflicts of interest posed by the DSC option.

We note that on June 1, 2023, the Canadian Securities Administrators (the "**CSA**") continued their examination of conflict of interest concerns in the Canadian investment industry by announcing that they, in conjunction with the Canadian Investment Regulatory Organization ("**CIRO**") would undertake a review of the use of chargebacks in the mutual fund industry.[5] The CSA has acknowledged that while the use of chargebacks is less common in the mutual fund industry, the use of chargebacks at all

[3] http://cfacanada.org/wp-content/uploads/2023/01/CAC-Comment-Letter-CCIR-and-CISRO-Consultation-on-Upfront-Commissions-Final.pdf
[4] https://www.cisro-ocra.com/Documents/View/2497
[5] https://www.securities-administrators.ca/news/canadian-securities-regulators-to-review-use-of-chargebacks-by-securities-registrants/

poses potentially significant conflict of interest concerns which merit a review by the regulators.

It is imperative to the trust and integrity of both the insurance and securities industries that economic incentives are aligned in a way that promotes transparent, simple fee structures which fully attribute all costs of financial advice and products to the customer. Any fee structure which incentivizes an advisor to recommend or maintain an investment over a potentially more suitable alternative poses an inherent conflict of interest. **To address all such conflicts, we would urge insurance regulators to extend the upfront commission ban to cover advisor chargebacks as well. We believe the concurrent review being undertaken by the CSA provides a unique opportunity for both industries' regulators to simultaneously address the problems and irresolvable conflicts posed by these fee structures through regulatory prohibitions.**

**Concluding Remarks**

We would encourage FSRA to take this opportunity to review the use of advisor chargebacks and institute an outright ban. We believe that doing so will most adequately satisfy FSRA's stated purpose of limiting undesirable customer outcomes including unsuitable advice and unexpected fees. We also believe that doing so will help cleanse the industry of compensation structures which have the potential to distort the incentives of agents relative to their customers' interests.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of*
*CFA Societies Canada*

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