

The Financial Planning Association of Canada

Official Commentary Submitted to

The Financial Services Regulatory Authority of Ontario

Regarding

Consultation on Updated Proposed Amendments to
The Unfair or Deceptive Acts or Practices Rule

June 2023

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About this Submission

This commentary is submitted to the Financial Services Regulatory Authority of Ontario in response to their request for commentary on Proposed Amendments to The Unfair or Deceptive Acts or Practices Rule.

We at the Financial Planning Association of Canada welcome the opportunity to participate in this process and lend our perspective on this critical change within the Canadian financial industry regulatory landscape.

About the Financial Planning Association of Canada

The Financial Planning Association of Canada (FPAC) is a new industry association founded in 2019, dedicated to professionalizing the Financial Planning industry. We aim to make financial planning a profession with the highest possible practice standards, fiduciary responsibility, and competency. It is our core belief that Financial Planners are uniquely positioned to help improve the lives of Canadians through comprehensive financial planning.

FPAC's founding Charter expressly prohibits us from issuing any credentials. We are, therefore, participating in this commentary solely from the perspectives of consumer protection and industry professionalization. We believe that only once Financial Planners are held to the highest standards, which would, in turn, lead to greater consumer confidence and trust, will FPAC be able to achieve its mission to professionalize the financial planning industry fully.

Scope of Commentary

We acknowledge that the commentary requested is solely regarding the proposed rules changes pertaining to the implementation of the ban on DSC sales of IVICs.

Acknowledgement of Limitations

We also acknowledge that unlike the ban on DSC sales of Mutual Funds, there are certain structural limitations that prohibit the ban on older "legacy" IVICs which investors may continue to have access to by way of contractual right and that these legacy contracts may offer benefits that are no longer being offered by newer contracts. We also understand that many of these contracts may not offer an alternative purchase option other than DSC.

While in an ideal scenario, these legacy IVICs would be legally mandated to provide a new Front End and/or No Load option this is not the case. Despite this being, in our view,

sub-optimal given this creates incentive for these products to continue to be sold, even if their additional benefits are not of relevance to the consumer, we acknowledge that there is no solution to this limitation at this time.

General Support & Commentary

We wish to voice our general support for the proposed changes. The implementation flow as outlined in Appendix D of notice for commentary summarizes what we feel is a fair approach given the acknowledged limitations and we commend FSRA on working within these limitations to work to implement the spirit of the ban as well as ensure proper disclosure to consumers about their options.

However despite our general support we do have a few areas of concern which are as follows.

Industry Withdrawal of Non-DSC Options

One possible issue we see regarding the maintaining of DSC options on legacy products is the ability for issuers of these products to effectively game the outcome by removing non-DSC options from the contract prior to the enforcement of this rule. We are unaware of any consideration that this proposed regulation make to would prevent this, nor are we aware of any carrier that has done this; however, we do believe it constitutes an option that could potentially be exploited and should be addressed to prevent such abuse from happening.

Definition of Unequivocally Better

We feel that the definition of Unequivocally Better in the proposed rule is a positive effort to ensure the fair implementation of changes to this rule. However, we wish to raise a point of order regarding 12(4)(iv) which states that:

“the sales charge option applied does not involve any new conflict between the interests of the insured and the interests of the insurer or an agent to the detriment of the insured.”

We would like to point out that it is our position that the move from DSC to Advisor Charge Back (ACB) would constitute a new conflict of interest between the insured interest and the agent. As per our submission to the CCIR in October of 2022, we stated:

“these are nothing more than carbon copies of DSC structures that change who the redemption fee is charged to. In doing so, while eliminating the issue of clients paying redemption charges, it created a new conflict where intermediaries would work to avoid these charges by preventing redemption of the investments, even if merited.”

This new incentive for the agent to discourage redemption for concerns over possible financial penalty to them is a conflict that cannot be ignored. This therefore would mean that any change from the DSC to ACB version of a fund would violate 12(4)(iv).

We wish to state again that we are opposed to ACB commission options in addition to DSC. However, despite our position on this and the fact that a move from DSC to ACB would violate 12(4)(iv), we acknowledge that a move to an option where the client would suffer no penalties for redemption, barring any other alternative, is one that we think is of net benefit to the client. Given the generally new nature of ACBs we do not foresee, nor should this be, a commonly encountered issue.

In general, we believe that the definition of unequivocally better is a good effort to try to provide direction to the insurers that is in keeping with the spirit of the ban and is beneficial to consumers given the current limitations.

Additional Concerns

While beyond the scope of the current call for commentary, we wish to raise two additional issues that we feel are of material relevance.

First we wish to reiterate again that we believe that the ban on DSC sales of IVICs should be extended to include ACBs. We detailed our reason in our October 2022 submission on Upfront Compensation in Segregated Funds. The ACB sales option creates a conflict of interest and incentives that are not in the best interest of consumers and cannot be ignored if the purpose of the Targeted Outcomes of the changes to compensation are to be met.

The last point we wish to make is that the current regulatory framework which does not currently grant rulemaking authority to FSRA is one that severely limits the ability of the organization to properly regulate the industry. We are in favour of extending greater authority to FSRA and other provincial regulators in order to give them the tools to better protect consumers and bring insurance industry regulation closer to the level of the securities industry. We hope to see proposals to change this paradigm in the near future.

Closing Summary

In closing, we at the Financial Planning Association of Canada thank you for the opportunity to provide commentary regarding this important issue. We hope that you have found our submission to be in keeping with the intended spirit of consumer protection and in keeping with our goal of the professionalization of the financial planning industry. We hope that you will see fit to implement our recommendations as outlined. We will also continue to make ourselves available for further input and support of this initiative.