

June 30, 2023

Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West, Suite 100  
Toronto, ON M2N 6S6

SENT VIA ONLINE SUBMISSION SYSTEM

Dear Sirs/Mesdames,

**Re: Consultation [2023-007]  
Second Proposed Amendment to the UDAP Rule – Deferred Sales Charges**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial Services Regulatory Authority of Ontario (“FSRA”) in response to the Consultation on the Second Proposed Amendment to the Unfair or Deceptive Acts or Practices (“UDAP”) Rule – Deferred Sales Charges (“Second Proposal”).

**1. ABOUT ADVOCIS**

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis’ motto: *non solis nobis* – not for ourselves alone.

**2. OUR COMMENTS**

We thank FSRA for conducting a public consultation with respect to the proposed amendments to the UDAP Rule. We appreciate FSRA’s efforts in strengthening consumer protection and ensuring fairness in the financial services industry. In our comments, we ask FSRA to further simplify the UDAP Rule and clarify ambiguities in the Second Proposal.



## **Simplifying the Process**

We recognize that the Second Proposal offers a more simplified and less cumbersome approach to existing deferred sales charges (“DSC”) schedules than the previous proposal which we commented on.<sup>1</sup> We appreciate that FSRA has meaningfully reduced the steps and streamlined the disclosure requirements.

However, we encourage FSRA to further simplify the process by eliminating DSCs for future deposits where insurers do not have the right to unilaterally eliminate DSCs. Instead, we ask that future deposits be made under a new contract with the insurer. The new contract should retain the benefits of the previous contract, such as death benefit, maturity guarantees and reset options. We believe that the costs and regulatory burden associated with allowing customers to make additional deposits subject to a DSC outweigh its benefits. Due to the risks and potential consumer harms associated with DSCs, new segregated funds with DSCs have been prohibited since June of this year. Consistent with phasing out DSCs, it would be more appropriate to disallow making additional DSC deposits on existing contracts while letting existing DSC schedules run their course.

A more simplified approach would reduce the number of disclosures industry participants need to prepare for consumers. As FSRA proposes, industry participants would still be obligated to provide a focused disclosure if the new sales charge option is unequivocally better for the customer. On the other hand, a more detailed disclosure would be required for new sales charge options that are not unequivocally better.

However, through simplification, the additional disclosure as required under section 12(8) of the UDAP Rule in the Second Proposal and the costs associated with this requirement would be eliminated. Creating a different set of disclosure pursuant to section 12(8), in addition to processing consumer elections, impose unnecessary and significant costs on industry participants.

## **Clarifying Ambiguities**

As discussed above, we believe that DSCs for future deposits should be eliminated. However, we understand that FSRA may nonetheless proceed with the Second Proposal. If so, we ask FSRA to clarify and expand on the requirements associated with written disclosures under section 12(8) of the UDAP Rule. Whereas subsections 12(3) to 12(7) of the UDAP Rule explain in detail the disclosure requirements, subsection 12(8) falls short of such a level of specificity and detail.

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<sup>1</sup> The Financial Advisors Association of Canada, Advocis, “Consultation [2022-013] Proposed Amendments to the UDAP Rule – Deferred Sales Charges” (February 23, 2023). At: [www.advocis.ca/wp-content/uploads/2023/02/Advocis-Response-23-2-2023\\_FSRA-UDAP-Rule-Amendments.pdf](http://www.advocis.ca/wp-content/uploads/2023/02/Advocis-Response-23-2-2023_FSRA-UDAP-Rule-Amendments.pdf).

We also invite FSRA to elaborate on the meaning of “reasonable time”, as this term has been referred to throughout section 12 of the UDAP Rule. Providing clarity on disclosure requirements in the UDAP Rule facilitates compliance with the rules and prevents unintended consequences of advisors not being clear with customers.

Using clear rules is also aligned with FSRA’s commitment to consistency and plain-language communication. In addition, it ensures that consumers are treated consistently and fairly when interacting with financial professionals and the financial services industry.

### **Advisor Chargeback**

In the absence of DSCs, FSRA is responsible for safeguarding alternative incentive structures for advisors while ensuring that consumers have access to valuable guidance, advice and products. Segregated funds play a crucial role as an investment insurance product, offering long-term financial stability. It is essential to adequately remunerate advisors for the value and advice they provide in this space.

We recognize that all incentive arrangements bring about certain risks. Finding the right balance is crucial to effectively manage these risks while upholding the principles of Fair Treatment of Customers. Acceptable incentive structures should appropriately compensate advisors without imposing excessive burdens on investors or generating unmanageable conflicts of interest.

We understand the difficulty of achieving this balance. However, we ask FSRA to clarify the reasoning behind disincentivizing the use of advisor chargeback by categorizing it as a sales charge option not unequivocally better than a DSC for the purpose of section 12(5) of the UDAP Rule.

We recognize the potential risks associated with the advisor chargeback options. That said, advisor chargeback provides advisors with the necessary incentive to provide long-term advice consistent with consumers’ long-term investment horizon. Discouraging advisors from utilizing advisor chargeback options can have broader implications for consumers’ access to advice and segregated fund products – especially for smaller or beginner investors with limited investment experience.

### **3. CONCLUSION**

We thank FSRA for the opportunity to provide our comments on the proposed amendments to the UDAP Rule. We appreciate FSRA’s efforts in simplifying its approach to deposits under existing segregated fund contracts.

We encourage FSRA to simplify the steps further and provide clarifications on certain issues. We look forward to continuing to work with FSRA to address the issues raised in this submission. Should you have any questions, please do not hesitate to contact the undersigned, or Paniz Ghazanfari, Associate Director, Legal & Regulatory Affairs at [pghazanfari@advocis.ca](mailto:pghazanfari@advocis.ca).

Sincerely,

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