

November 7, 2022

VIA EMAIL

Canadian Council of Insurance Regulators  
Canadian Insurance Services Regulatory Organizations  
c/o CCIR Secretariat  
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Email: [ccir-crra@fsrao.ca](mailto:ccir-crra@fsrao.ca)

**Re: *Discussion Paper on Upfront Compensation in Segregated Funds (the “Consultation”)***

The Canadian Advocacy Council of CFA Societies Canada<sup>1</sup> (the “CAC”) appreciates the opportunity to provide the following general comments on the Consultation.

We are supportive of the current review being undertaken by the Canadian Council of Insurance Regulators (“CCIR”) and the Canadian Insurance Services Regulatory Organizations (“CISRO”) on upfront compensation paid for the sale and servicing of certain insurance products. We were (and remain) very supportive of the effective ban on deferred sales charges in segregated fund sales, and we believe additional review of other types of upfront compensation and ongoing sales incentives in the insurance sector is indeed warranted, and that **all forms of Upfront Compensation (both DSC and Advisor Chargeback options) should be banned as soon as possible because of the foundational irresolvable conflicts they create between financial consumers and those who provide them advice (in this case through advice relating to an insurance product purchase)**. We believe that comparison to the CSA’s reasons for considering ending embedded commissions in securities-regulated investment funds (and underlying the associated recent ban of deferred sales charges) is instructive, as the three identified foundational investor protection and market efficiency issues (as reproduced in the Consultation) from CP 81-408 provide sound basis for evaluating similar customer alignment and compensation issues for insurance regulators. In the review of ongoing sales incentives, we believe CSA Staff Notice 33-318 – *Review of*

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<sup>1</sup> 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](http://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](http://www.cfainstitute.org) or follow us on [LinkedIn](#) and Twitter at [@CFAINstitute](#).

*Practices Firms Use to Compensate and Provide Incentives to their Representatives* may be instructive to insurance regulators, as it explores the conflicts that various ongoing sales incentives create between securities registrants and investors. Many of these enumerated concerns likely directly translate to similar compensation structures and conflicts for the insurance segment.

We agree that upfront commissions and certain ongoing compensation methods or sales incentives (most particularly DSC and Advisor Chargeback options) in segregated funds raise conflict of interest concerns because a consumer relies on someone to sell them a suitable product, and the intermediary and/or licensed individual is being paid by the product manufacturer for the sale. We are particularly concerned about the possibility that insurance representatives will be incentivized to sell products (and provide advice to consumers) that provide them with the highest compensation (either directly or through incentive or 'bonus' programs), rather than selling the product that is most suitable for the consumer. This conflict is compounded in the case of the Advisor Chargeback option when faced with a policyholder/investor with changing personal circumstances over the life of the sold product subject to the Advisor Chargeback option, in that the consumer/purchaser should be able to rely on their salesperson for advice that is responsive to their changing personal circumstances, without having to navigate the conflict of the potential for the advisor to have to repay a (potentially substantial) upfront commission if they overcome their inherent (and fundamentally – likely irresolvable) conflict and advise the client to make the product switch that is most appropriate for their changing circumstances. **We believe the Advisor Chargeback option, while lightening perhaps the fee obligations on a customer of a product switch relative to a DSC option, deeply compounds the conflict-of-interest issues present in all Upfront Commission structures. We would \*urge\* insurance regulators to extend the Upfront Commission ban to also cover the Advisor Chargeback option.**

It is also problematic that fee disclosures do not provide consumers with the information needed to properly assess the impact of all costs and fees on their returns (or potential return), especially with respect to the lack of on-going disclosure on intermediary compensation that would better allow a consumer to consider the impact of salesperson/intermediary conflicts in the product advice that they've received. As CFA Charterholders, we support rules that foster clear, transparent and comparable disclosure to investors about the costs of financial products and investing. In our view, CCIR's and CISRO's approach to fee reporting should be guided by the same principles that guide performance disclosure under the Global Investment Performance Standards (GIPS®): fundamentally that information should be calculated and presented "in a fair and comparable format that provides full disclosure"<sup>2</sup>.

We note in particular that sales of insurance products are often made by dually-licensed salespeople, which exacerbates potential conflicts in that the salesperson might be incentivized to sell the lesser-regulated product – particularly the product/regulatory treatment with the lesser standard for conflict disclosure/mitigation or cost/fee disclosure. In addition, there are a number of hybrid investment products currently in the market which combine features of both securities and insurance products, leading to investor

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<sup>2</sup> CFA Institute, Global Investment Performance Standards (GIPS®) Handbook, 3rd ed (2012) at p. 2 (emphasis added). GIPS® is a registered trademark owned by CFA Institute.

confusion with respect to the applicable regulatory regime and realistic expectations of disclosure from their advisors and the appropriate cost of their investment products and related advice.

As part of the FTC Guidance, we understand that insurers and intermediaries are expected to manage or avoid potential and actual conflicts of interest, including those arising from compensation matters. If it is not possible to place a customer's interest ahead of their own interests, such individuals are expected to decline to act. While this guidance is laudable, to be effective we believe it is necessary to reflect these principles directly in insurance legislation or regulation, similar to what is provided for in the securities industry pursuant to the Client Focused Reform amendments now embedded in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

We recognize that the ability of licensed individuals to distribute products for more than one intermediary or insurer in many jurisdictions may complicate supervision of adherence to conflict-of-interest rules. However, we believe that it is possible to impose such obligations directly on those licensed individuals, through necessary enhancement of existing regulatory structures and mechanisms. Many end-users of insurance products rely heavily on the advice provided by insurance representatives, and may have little to no interaction with the insurer itself, or any other party. We believe insurance regulators should demand either disclosure of current indirect and non-disclosed compensation (such as compensation through the Intermediary not disclosed at point of sale) or ban it outright (our preference) to minimize the conflict that this generates with consumer interests due to lack of awareness or comprehension. We have not seen any compelling data to suggest that non-transparent and conflict-generating compensation structures (or inordinately expensive insurance product compensation) should be allowed generally, or on the basis that this provides effective subsidy for new Intermediaries to build their businesses.

Additional guidance could then (and should) be provided with respect to regulatory expectations for these individuals as it relates to comparability of available products. Such guidance should explain how a consideration of alternative insurance products, including with respect to costs and fees, helps to place a customer's interest ahead of the representative's own with respect to compensation and conflicts.

### **Concluding Remarks**

We strongly support initiatives to increase cost and fee transparency in the sale of insurance products, particularly given the interdependencies and potential for regulatory arbitrage at point-of-sale for many retail investors between the insurance and securities markets. We strongly urge regulators to ban both Upfront Commission structures (both DSC and Advisor Chargeback) because of the irresolvable conflicts they place between Intermediaries and their clients. Trust in both the insurance and financial industries would benefit from a structure of economic incentives that more actively promotes transparent, simple fee structures, full attribution of all costs to the customer related to their financial advice and products, and an industry structure that more actively promotes competition in the distribution of insurance products to investors on the basis of transparent value-for-service and advice.

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](mailto:cac@cfacanada.org) on this or any other issue in future.

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

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