

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF RULE UNDER THE *INSURANCE ACT*

Rule 2020 – 002 Unfair or Deceptive Acts or Practices Rule

Amendment 2 - Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts

November 25, 2022

Introduction

The Financial Services Regulatory Authority of Ontario (“**FSRA**”) is strengthening Ontario’s regulatory regime (the “**Regime**”) and taking steps to protect customers with respect to deferred sales charges (“**DSC**” or “**DSCs**”) on individual variable insurance contracts (“**IVICs**,” also known as individual segregated fund contracts).

FSRA is proposing two amendments (the “**Amendments**”) to the Unfair or Deceptive Acts or Practices Rule (the “**UDAP Rule**”) ¹ under the *Insurance Act* (the “**Act**”). The Amendments would implement a principles-based and outcomes-focused approach to limit undesirable customer outcomes related to DSCs.

- This Notice of Rule discusses the second amendment, which is contained in Appendix A to this document (the “**Second Proposed Amendment**”).
 - The Second Proposed Amendment would implement customer protection measures in relation to future deposits made on a DSC basis to IVICs issued prior to June 1, 2023.
- The Notice of Rule for the first amendment can be found here: [Amendment 1 – Deferred Sales Charges – New Individual Variable Insurance Contracts \(the “First Proposed Amendment”\)](#).
 - The First Proposed Amendment would address new IVICs issued on or after June 1, 2023 and changes to existing IVICs to add DSC sales charge options to them.
 - It aims to harmonize the Regime with other Canadian jurisdictions by implementing an enforceable ban on using DSCs for IVICs issued on or after June 1, 2023.
 - It aims to harmonize the Regime with the DSC ban in place for mutual funds, to the extent it is practical and appropriate to do so.

As required by s. 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”), FSRA is publishing the Second Proposed Amendment for comment on its website. Stakeholders can make written comments on the Second

¹ Rule 2020 – 002 Unfair or Deceptive Acts or Practices.

Proposed Amendment within 90 days after the Second Proposed Amendment's publication. FSRA will publish stakeholder comments on its website.

Stakeholders can submit comments for the First Proposed Amendment and Second Proposed Amendment either separately or together. To make it easier to review the effects of these Proposed Amendments:

- a blacklined copy of the UDAP Rule that shows the changes proposed under the two Rules together is attached as Appendix B; and
- a flow chart that shows the changes will affect contracts that exist when the Proposed Amendments take effect is attached as Appendix C.

Background

On February 10, 2022, the Canadian Council of Insurance Regulators (“**CCIR**”) and Canadian Insurance Services Regulatory Organizations (“**CISRO**”) (collectively the “**Insurance Regulators**”), announced that due to the high risk of poor consumer outcomes associated with DSCs in the sale of IVICs, insurers should refrain from engaging in new DSC sales and that a transition to the cessation of such sales is expected by June 1, 2023.

FSRA is implementing the Insurance Regulators' expectation by proposing the First Proposed Amendment. In addition, FSRA's view is that it is necessary to implement additional customer protections with respect to DSCs; these protections would apply to IVICs that are in effect on June 1, 2023, and to those issued on or after June 1, 2023. The Second Proposed Amendment would protect customers by prohibiting the following outcomes (the “**Prohibited Outcomes**”) occurring on or after June 1, 2023:

- insurers accepting deposits on a DSC basis on IVICs if the contract allows the insurer to remove DSC as a sales charge option and accept deposits under a different sales charge option;
- an insurer accepting a deposit to an IVIC and applying a sales charge other than DSC if the insurer and owner had agreed a DSC would apply to the deposit but the insurer withdrew the DSC option for future deposits, unless, before the insurer applies the new sales charge option,
 - the customer receives written disclosure from the insurer reasonably designed to help the customer choose a different sales charge option; and either:
 - the customer agrees to the new sales charge option applying to future deposits; or
 - a reasonable time elapses, during which the customer fails to notify the insurer of the customer's chosen sales charge option;
- insurers accepting deposits on a DSC basis on any IVIC unless, before the insurers accepts such deposits, the owner receives written disclosure from the insurer reasonably designed to help the owner to understand the sales charge options available to them and whether making further deposits on a DSC basis is suitable for them.

The Second Proposed Amendment is consistent with FSRA's short-term priorities. As described in FSRA's most recent Annual Business Plan,² one of FSRA's planned outcomes for this fiscal year is to help ensure that customers are treated fairly by ensuring that the industry has a clear understanding of FSRA's regulatory expectations with respect to the sale and administration of IVICs. The Second Proposed Amendment, if approved, would communicate to industry that when an insurer administers an IVIC it must avoid any action or inaction that results in, or could reasonably be expected to result in, the Prohibited Outcomes.

The Second Proposed Amendment also aligns with FSRA's statutory objects, which include FSRA's duties to:

- regulate and generally supervise the regulated sectors;
- contribute to public confidence in the regulated sectors;
- promote high standards of business conduct;
- cooperate and collaborate with other regulators where appropriate;
- protect the rights and interests of consumers;
- promote transparency and disclosure of information by the regulated sectors; and
- foster strong, sustainable, competitive and innovative financial services sectors.

FSRA expects the Second Proposed Amendment to come into force on June 1, 2023, subject to the Minister of Finance's (the "**Minister**") approval.

Substance and Purpose of the Second Proposed Amendment

i. Purpose

One purpose of the Second Proposed Amendment is to promote high standards of business conduct in relation to DSCs.³ The Prohibited Outcomes would introduce new regulatory prohibitions that would heighten standards of business conduct, including by prohibiting insurers from accepting deposits on a DSC basis if the IVIC allows the insurer to remove DSC as a sales charge option and accept deposits under a different sales charge option. By strengthening standards of business conduct with respect to DSCs, the Second Proposed Amendment would promote high standards of business conduct.

Another purpose is to protect the rights and interests of consumers in relation to DSCs.⁴ As the Second Proposed Amendment would facilitate greater customer understanding of available sales charge options and the suitability of making deposits on a DSC basis, customers would be able to make more informed decisions. Through more informed

² FSRA Annual Business Plan, 2022-2025, p. 41.

³ This purpose is consistent with s. 3(2)(a) of the FSRA Act, which provides that an object of FSRA in respect of the financial services sectors is to promote high standards of business conduct.

⁴ This purpose is consistent with s. 3(2)(b) of the FSRA Act, which provides that an object of FSRA in respect of the financial services sectors is to protect the rights and interests of consumers.

decisions, customers would have a superior ability to protect their own rights and interests. As well, customers would be protected from insurer conduct which could negatively impact their interests because the Second Proposed Amendment would prohibit insurers from accepting deposits on a DSC basis if insurers can remove DSC as a sales charge option and instead accept deposits under a different sales charge option.

The Second Proposed Amendment also provides clarity to industry on the treatment of DSCs for all IVICs. Industry has sought clarity from FSRA on FSRA's proposed treatment of DSCs for IVICs issued before June 1, 2023. Through the Prohibited Outcomes, the Second Proposed Amendment clarifies the Regime's treatment of DSCs for all IVICs.

ii. Substance

The Second Proposed Amendment's substance is to, in a principles-based and outcomes-focused manner, implement measures to protect customers from negative outcomes related to DSCs for all IVICs.

In particular, the Second Proposed Amendment would protect customers and lessen negative outcomes by prohibiting insurers from:

- accepting deposits on a DSC basis:
 - if the insurer has the right to remove the DSC option and instead accept deposits under a different sales charge option; and
 - in all other cases, before the customer receives disclosure that helps the customer to make more informed choices about depositing money on a DSC basis.
- applying a new sales charge option to a deposit, if the customer and insurer agreed that DSCs would apply to deposits, unless and before the insurer applies the new sales charge option,
 - the customer receives written disclosure from the insurer reasonably designed to help the customer choose a suitable sales charge option; and either:
 - the customer agrees to the new sales charge option applying to future deposits; or
 - a reasonable time elapses, during which the customer fails to notify the insurer of the customer's chosen sales charge option.

Summary of the Second Proposed Amendment

i. Prohibited Outcomes

The Second Proposed Amendment would amend the UDAP Rule to introduce the following prohibited outcomes effective June 1, 2023:

- an insurer accepting a deposit to an IVIC that may be subject to a DSC, if the insurer could, under the contract, remove DSC as a sales charge option and accept deposits under a different sales charge option;
- an insurer accepting a deposit to an IVIC and applying a sales charge option other than a DSC, if the insurer and owner had agreed that a DSC would apply to the deposit, but the insurer has withdrawn the DSC as a sales charge option for future deposits, unless prior to the insurer applying a new sales charge option;
 - the owner receives written disclosure from the insurer which is reasonably designed to help the owner choose a suitable sales charge option; and either:
 - the owner agrees to a new sales charge option applying to future deposits; or
 - a reasonable time elapses, during which the owner does not notify the insurer of the owner’s choice of sales charge option;

Note: At a minimum, the disclosure must include: a list of sales charge options the owner may choose among, a description of how each sales charge option works, the percentage amount of any initial sales charge under each applicable sales charge option, and a description of the relevant management expense ratios;

- an insurer accepting a deposit that may be subject to a DSC unless, prior to the insurer accepting such a deposit, the owner receives written disclosure from the insurer that is reasonably designed to help the owner understand the sales charge options available to them and whether making deposits on a DSC basis is suitable for them.

Note that the Second Proposed Amendment uses the word “insured” rather than “owner” but under Part V of the Act, which governs IVICs, the word “insured” means the person who owns the IVIC.⁵

Authority for the Second Proposed Amendment

Subsection 21(1) of the FSRA Act allows FSRA to make rules in respect of any matter over which a statute provides FSRA rulemaking authority. As the Act contains the UDAP Rulemaking Power, FSRA is allowed to prescribe the Prohibited Outcomes as a UDAP.

The UDAP Rulemaking Power provides FSRA with authority to make a rule prescribing any activity or failure to act as a UDAP and to prescribe requirements, that if not complied with, constitute a UDAP. Pursuant to the UDAP Rulemaking Power, FSRA has the authority to prescribe the Prohibited Outcomes as UDAPs.

⁵ See, e.g., ss. 171(1) “insured”, 199(1)(b), 199(2) and 200(3) of the *Insurance Act*.

Unpublished Materials

FSRA has not relied on any significant unpublished study, report, decision or other written material.

Alternatives Considered

As noted in the Introduction, FSRA is currently proposing the Amendments to the UDAP Rule to address DSCs. The First Proposed Amendment would prohibit insurers from issuing new IVICs with DSCs on or after June 1, 2023. The Second Proposed Amendment discussed in this Notice of Rule would introduce customer protections in relation to making new deposits to IVICs on a DSC basis on or after June 1, 2023.

FSRA has considered the following alternatives to this approach.

1. Combine First Proposed Amendment and Second Proposed Amendment

FSRA considered proposing the First Proposed Amendment and Second Proposed Amendment in a single document that would amend the UDAP Rule. This approach would ultimately achieve the same purpose.

However, FSRA has divided the Rule into two parts to allow stakeholders to review: (1) the effects of the changes that prohibit new DSCs and changes to increase the scope of DSCs; and (2) the effects of the changes on new deposits to existing contracts that already have DSCs on them. This may facilitate future consultations and rule-making if it is necessary to consult on one of these amendments in the future but not the other, or to consult on them at separate times.

For this reason, FSRA has chosen to propose the First Proposed Amendment and Second Proposed Amendment separately.

2. Rule – Ban new DSC deposits on all contracts

FSRA considered proposing a Rule that would ban all deposits on a DSC basis on or after June 1, 2023, under both new and existing IVICs.

FSRA decided against adopting this approach because it would be an extraordinary interference with existing contracts, and it could lead to unexpected customer harm. DSCs might also be suitable for customers making further deposits to a pre-existing contract if it has benefits that are no longer available under new contracts, even if the contract only allows deposits on a DSC basis.

Prohibiting all deposits on a DSC basis would remove a contractual right that some customers benefit from, and that some have deliberately sought and obtained. For these reasons, FSRA has decided not to adopt this approach.

3. Rule – Ban insurers from charging money under DSCs

FSRA considered proposing a Rule that would prohibit insurers from charging DSCs on or after June 1, 2023, when the contract otherwise specifies a DSC is payable. This Rule could apply to all deposits regardless of when they were made, or just to deposits made on or after June 1, 2023. Customers would immediately benefit from the change, potentially even on deposits made before the Rule's effective date. The Rule would not prohibit customers from continuing to make deposits to their contracts even if the only sales charge option under the contract is DSC. Therefore, customers would still experience the benefits associated with those contracts, including better guarantees than might otherwise be available.

However, if the Rule applied to deposits made prior to June 1, 2023, this approach would go further than the ban on DSCs for mutual funds. The securities regulators have allowed fund organizations to charge DSCs when customers redeem mutual fund units during the DSC period, assuming the units were purchased before the ban took effect, even if the redemption occurs after the effective date of the ban. To impose this ban for IVICs would be contrary to one of FSRA's goals, which is to harmonize the insurance sector DSC ban with the DSC ban in place for mutual funds, to the extent it is practical and appropriate to do so.

Banning insurers from charging money on IVICs where customers made deposits on a DSC basis would also require the insurers to absorb the costs that DSCs were intended to fund.

For these reasons, FSRA decided against adopting this approach.

4. Rule – Ban DSCs on new contracts only

FSRA considered banning DSCs on new contracts only and not addressing further DSC deposits to existing contracts. However, this approach would not immediately mitigate DSC-related risks for future deposits on existing contracts.

For this reason, FSRA decided to take a two-pronged approach, addressing new contracts and future deposits to existing contracts in two separate amendments. This approach will maximize the likelihood that Ontario will have a binding ban on new IVICs with DSCs in effect by June 1, 2023, while mitigating the risks to customers with respect to existing contracts through the Second Proposed Amendment.

5. Rule under Segregated Fund Rule-making Power

FSRA is proposing to implement the DSC ban under the UDAP Rulemaking Power, but also considered using the Act's rule-making power with respect to variable insurance contracts. This power is described in amendments to the Act that received Royal Assent in Fall 2021 and would allow FSRA to propose rules with respect to the design, marketing, sale, issuance and administration of variable insurance contracts (the

“**Segregated Fund Rule-making Power**”).⁶ However, these amendments have not yet been proclaimed into force. In light of FSRA’s goal of having the DSC ban for new contracts in effect by June 1, 2023, FSRA is proposing to use the existing UDAP Rulemaking Power, rather than delaying until the Segregated Fund Rule-making power is proclaimed into force.

6. Guidance

FSRA considered implementing the DSC ban by using guidance that interprets existing legislation or otherwise establishes FSRA’s internal practices and procedures with respect to DSCs. However, FSRA intends to create requirements that will clearly and certainly have legal effectiveness and enforceability.

For this reason, FSRA is proposing Rules instead of Guidance.

7. Status quo (no action)

As always, FSRA evaluated whether regulatory action is required. However, in light of the risks DSCs pose to consumers as announced by the Insurance Regulators in February 2022, FSRA did not consider this to be an appropriate response. Furthermore, FSRA has a duty to fulfil its statutory objects, including regulatory cooperation and collaboration.

Anticipated Costs and Benefits

Costs

To comply with the Second Proposed Amendment, insurers would incur costs with respect to:

- withdrawing DSC as a sales charge option from contracts that allow the insurer to do so, to avoid further deposits to existing contracts on a DSC basis; and
- customer suitability disclosure in relation to future DSC deposits where the insurer cannot withdraw the DSC sales charge option under existing contracts.

With respect to withdrawing DSC as a sales charge option, insurers may incur costs associated with:

- reviewing samples of all existing individual segregated fund contracts under which Ontario customers have the right to make further deposits on a DSC basis;
- identifying which of these contracts allow the insurer to remove DSC as a sales charge option for future deposits and, if so, on what basis;
- taking steps required under applicable contracts to remove DSC as a sales charge option for new deposits, including communicating with existing contract owners;

⁶ 2021, c. 40, Sched. 14, s. 2 introduced clause (11.1) of s. 121.0.1(1) 11.1 to the *Insurance Act*.

- where such contracts have DSC as the only sales charge option, designing and implementing at least one new sales charge option;
- updating information folders and Fund Facts documents;
- updating systems to reflect the available sales charge options for future deposits;
- creating job aids and training for staff and agents on the changes to affected contracts.

Insurer costs associated with the new disclosure UDAP may require for customers who continue making deposits on a DSC basis include costs associated with:

- preparing appropriate disclosure that is reasonably designed to allow customers to assess in what situations it would be suitable for them to continue making deposits on a DSC basis;
- ensuring this information is communicated to customers in an understandable manner; and
- implementing systems to ensure the insurer does not accept new deposits from a customer on a DSC basis until the customer receives appropriate disclosure.

Insurer costs associated with the new disclosure UDAP may require for customers whose DSC option is withdrawn, in cases where those customers have already instructed the insurer to apply the DSC option to future deposits, include costs associated with:

- identifying customers who have instructed the insurer to apply the DSC option to future payments, such as in cases where the customer has signed a pre-authorized payment authorization;
- creating appropriate disclosure for these customers;
- notifying customers of their other sales charge options, telling them what the default option will be if they do not respond, and allowing them a reasonable time to do so; and
- tracking responses and applying either the customer's choice or the default option, as appropriate.

Agents who service clients who own IVICs would need to familiarize themselves with updates to sales charge options for future deposits to existing contracts. Agents might also be involved in providing disclosure documentation to clients, and would need to address customer questions about the suitability of DSCs for future deposits, or about alternative sales charge options where the DSC option is withdrawn.

FSRA staff would need time to implement the Second Proposed Amendment, including reviewing updated information folders and Fund Facts documents as required under Ontario Regulation 132/97: Variable Insurance Contracts ("the **IVIC Regulation**"). If all insurers submit updated documents at the same time, FSRA may need additional resources to complete its reviews within the 30 days permitted under the IVIC Regulation.

Some customers may pay more to invest in IVICs under the Second Proposed Amendment, when compared to what would be paid if the Second Proposed

Amendment is not approved. Customers who choose a DSC for their investments and who do not withdraw money during the DSC period currently pay nothing as a sales charge. Depending on what sales charge options insurers offer for future deposits in place of DSCs, customers may be required to pay for costs associated with the sale of their contracts.

The risk of higher sales costs to customers may be mitigated to the extent that insurers offer the Advisor Chargeback sales charge option for future sales. Under this option, the insurer typically pays an agent compensation when a customer buys or makes a deposit to an IVIC. If the customer withdraws money within a specified time, the agent is required to repay all or part of the compensation to the insurer. The customer is not required to pay any amount directly for the sales charge.

Benefits

If approved, the Second Proposed Amendment would have the following benefits:

- Promote greater confidence in the insurance industry and protect customers by either:
 - removing the conflict of interest that agents currently experience regarding DSCs, which are typically associated with high upfront compensation that can motivate agents to recommend DSCs for customers when they make post-sale deposits to IVICs, even when DSCs are not suitable; or
 - providing customers with sufficient information to make more informed choices about whether making deposits on a DSC basis are suitable for them;
- Reduce the likelihood of customers investing future deposits on a DSC basis when that sales charge option is not suitable for them;
- Promote high standards of business conduct and foster a strong, sustainable, competitive and innovative insurance sector by motivating insurers to focus more on the quality of their products to attract future deposits from investors than on compensation to agents (thereby potentially reducing costs that are passed along to customers who invest in IVICs);
- Promote transparency and disclosure of information by insurers by requiring new disclosure before insurers can impose a new sales charge option, after withdrawing the DSC option, where customers had instructed the insurers to apply the DSC option to future deposits;
- Place customers in a better position to make informed decisions;
- Reduce the likelihood of unexpected fees for customers when they withdraw money from their IVICs; and
- Reduce customer complaints.

Overall, the Second Proposed Amendment would increase the likelihood that customers will be treated fairly with respect to their individual segregated fund contracts.

Recommendations to the Minister

FSRA will recommend that a consequential amendment be made to subsection 12(1) of Ontario Regulation 347/04: Agents to include the following language:

“Act, the regulations, the agent’s licence and Authority rules.”

FSRA will also recommend that consequential amendments be made to Ontario Regulation 408/12: Administrative Penalties, so that the Prohibited Outcomes are subject to administrative monetary penalties.

Proposed Amendment

Please refer to Appendix A for the full text of the Second Proposed Amendment.

Appendix A

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

RULE 2020 – 002

Unfair or Deceptive Acts or Practices

**Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual
Variable Insurance Contracts**

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
RULE 2020 – 002
Unfair or Deceptive Acts or Practices

Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts

1. Rule 2020 – 002 Unfair or Deceptive Acts or Practices (the “**UDAP Rule**”) is amended by this Amendment 2 – Deferred Sales Charges – Deposits to Pre-June 1, 2023 Individual Variable Insurance Contracts (the “**Amendment**”).
2. The UDAP Rule is amended by adding the following sections:

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

- 12(2) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge if the insurer has the right under the terms of the individual variable insurance contract to remove deferred sales charge as a sales charge option and instead accept deposits under a different sales charge option.
- 12(3) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023 and applying a sales charge option to the deposit other than a deferred sales charge option, if the insurer and insured had agreed that a deferred sales charge would apply to the deposit, but the insurer has withdrawn the deferred sales charge option for future deposits, unless and before the insurer applies the new sales charge option,
 - (i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, and which at a minimum includes,
 - (a) a list of sales charge options the insured may choose among,
 - (b) a description of how each applicable sales charge option works,
 - (c) the percentage amount of any initial sales charge under each applicable sales charge option,
 - (d) a description of the relevant management expense ratios, including,
 - (i) any different charges for different guarantee options,
 - (ii) what the management expense ratios include, and

(iii) how management expense ratios affect the insured's returns on their investments, and

(ii) either,

(a) the insured agrees to the new sales charge option applying to the deposit, or

(b) a reasonable time elapses, during which the insured does not notify the insurer of the insured's choice of sales charge option, after the insurer

(i) provides the required disclosure,

(ii) notifies the insured of the default sales charge option, and

(iii) notifies the insured of the time until that default sales charge option will apply.

12(4) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge, unless the insured receives written disclosure from the insurer, before the insurer accepts the deposit, that is reasonably designed to help the insured understand the sales charge options available to them and whether making a deposit on a deferred sales charge basis is suitable for that insured.

3. This Amendment will come into force on the later of,

(i) 15 days after being approved by the Minister, or

(ii) the date that Amendment 1 – Deferred Sales Charges – Issuing and Changing Individual Variable Insurance Contracts comes into force.

Appendix B

Unfair or Deceptive Acts or Practices – Blacklined with DSC Rule Changes

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,
- (iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf,
- (iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
- (v) “Contract of insurance” means,
 - (a) for a contract of life insurance, has the meaning ascribed to such term in s. 171(1) of the Act,
 - (b) for a contract of accident and sickness insurance, has the meaning ascribed to such term in s. 290 of the Act, and
 - (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,
- (vi) “Credit information” means information about a person’s creditworthiness, including a person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,
- (vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

(vii.1) “Deferred sales charge” means,

(i) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured,

(a) makes a withdrawal from a segregated fund, or

(b) changes the sales charge option that applies to any investment in a segregated fund under the individual variable insurance contract,

and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or affected by the change, and/or the original cost of the units redeemed or affected by the change, according to a predetermined calculation or schedule set out in the individual variable insurance contract,

(ii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured does not make payments when required under the individual variable insurance contract,

(iii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay that is described in the individual variable insurance contract by one of the following terms, or a term substantially similar to any of these terms,

(a) deferred sales charge, DSC, DSC sales charge, DSC charge, DSC fee,

(b) low-load sales charge, low-load charge, low-load fee, low sales charge,
or

(c) back-end sales charge, back-end load, back-end charge, back-end fee,
or

(iv) any fee or charge a reasonable insurer would consider to be a deferred sales charge,

provided however and despite the foregoing, a deferred sales charge does not include,

(a) a fee or charge the insured is only required to pay at the time they deposit funds to the individual variable insurance contract,

(b) a fee or charge the insured is required to pay because the insured moves money among investment options within the individual variable insurance contract more often than the individual variable insurance contract permits without charge,

(c) a short term trading fee the insured is required to pay if the insured withdraws money from the individual variable insurance contract, or moves money among investment options within the individual variable insurance contract, within 90 days of investing the money, or

(d) a market value adjustment the insured is required to pay that is calculated based on changes in interest rates, but not based on compensation an agent received with respect to the investment,

(vii.2) "Individual variable insurance contract" means an individual contract of life insurance under which the insurer's liabilities vary in amount depending upon the market value of a specified group of assets in a segregated fund. Individual variable insurance contract includes a provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund,

(vii.3) "Person" has the meaning ascribed to such term in s. 438 of the Act,

(viii) "Prohibited factor" means,

(a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,

(b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or

(c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

(ix) "Reasonable person" means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

(x) "Schedule" means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are active claims,

(x.1) "Segregated fund" has the meaning ascribed to such term in s. 1(1) of O. Reg. 132/97: VARIABLE INSURANCE CONTRACTS,

(xi) "Substantially deficient" means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole

of the goods or services was unfit for the purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of those goods or services,

- (xii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of those goods or services, would not charge or seek, or would not expect a reasonable person who is in the position of the recipient of the goods or services, to accept.
- 1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.
 - 1(3) For greater clarity, in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate to that insurer’s nature, size, complexity, operations and risk profile.
 - 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or authorized representative,
 - (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person, or
 - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
 - 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the purposes of determining what conduct, including inaction or omission, could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule,

- (i) if the action or conduct, including inaction or omission is committed by,
 - (a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or
 - (b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

- (ii) if the action or conduct, including inaction or omission, is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.

- 2(3) S. 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in s. 6 of this Rule.

3 Non-Compliance with Law

- 3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.
- 3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.
- 3(3) Non-compliance with any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

- 4(1) Any unlawful or unfair discrimination, including any contravention of the Ontario *Human Rights Code*, in the provision or administration of insurance, or goods or services related to insurance, including,

- (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
- (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

- 5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,
- (i) treating a claimant in an arbitrary, capricious or malicious manner,
 - (ii) not acting in good faith,
 - (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,
 - (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
 - (v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or
 - (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.
- 5(2) With respect to automobile insurance,
- (i) non-compliance with the Schedule, including but not limited to,
 - (a) payment for goods or services not being made, or
 - (b) the cost of an assessment not being paid,without reasonable cause, within the time period prescribed in the Schedule,
 - (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or

- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

- 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.
- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.
- 6(4) With respect to automobile insurance, a claimant signing or being asked to sign, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a guideline applicable for the purposes of the Schedule.
- 6(5) Information being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person who is in the position of the intended recipient would consider false, misleading or deceptive.

7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
 - (i) as an incentive or inducement for a person to take an action or make a decision relating to an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable action or decision by a reasonable person licensed to sell such an insurance product,
 - (ii) which is otherwise prohibited by law,
 - (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,
 - (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including but not limited to, tied selling or predatory pricing,

- (v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or
 - (vi) if related to automobile insurance, which is based, in whole or in part, on, or is calculated by reference to, prohibited factors.
- 7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule also apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.
- 7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.
- 7(4) For the purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.
- 7(5) For the purposes of this section, a gift or thing of value will not be considered an incentive or inducement if that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

- 8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of such recipient would consider to be inappropriate, inaccurate or misleading, respecting,
- (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
 - (ii) an insurance claim, the claims process or whether a policy provides coverage, or
 - (iii) any comparison of contracts of insurance.
- 8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

9 Prohibited Conduct in Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to,

- (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
 - (ii) using credit information or a prohibited factor,
 - (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
 - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
 - (v) misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is required by law to use,
 - (vi) making the issuance or variation of a policy of automobile insurance conditional on an insured having or purchasing another insurance policy,
 - (vii) engaging in unfair discrimination,
 - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
 - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
 - (x) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the automobile insurance contract.
- 9(2) Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than,
- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under s. 227(1) of the Act, or
 - (ii) in accordance with the consent obtained in compliance with applicable privacy laws of the person to whom the information relates.

10 Affiliated Insurers

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to an insured or potential insured, having regard to all of the circumstances, including but not limited to,

- (i) each insurer’s declination grounds,
- (ii) each insurer’s rates and risk classification systems,
- (iii) each insurer’s method of distribution, or
- (iv) whether the insurers only recently became affiliated.

11 Deferred Sales Charges – New Individual Variable Insurance Contracts

11(1) An insurer issuing an individual variable insurance contract on or after June 1, 2023, under which a person can make an investment that may be subject to a deferred sales charge.

11(2) For the purposes of s. 11(1) of this Rule, an insurer is not considered to “issue” an individual variable insurance contract where a person has an existing individual variable insurance contract with the insurer and the insurer issues a replacement individual variable insurance contract on the same terms and conditions, except any changes required by applicable tax or pension laws, including issuing a contract in connection with,

- (i) converting a registered retirement savings plan to a registered retirement income fund contract,
- (ii) converting a locked-in retirement account to a life income fund contract, or
- (iii) transferring ownership of the individual variable insurance contract.

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

12(1) An insurer amending an individual variable insurance contract, or exercising a right under an individual variable insurance contract, to add, withdraw or change a sales charge option on or after June 1, 2023, if, as a result,

- (i) the individual variable insurance contract may permit or require an insured to pay a deferred sales charge, or
- (ii) a reasonable person would believe a deferred sales charge under the individual variable insurance contract becomes less favourable to the insured, including any change that,

(a) increases the amount of the investment which is or may be subject to a deferred sales charge,

(b) increases the duration of a deferred sales charge,

(c) increases the amount payable in any given circumstances under a deferred sales charge, or

(d) extends the circumstances that trigger payment of a deferred sales charge.

12(2) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge if the insurer has the right under the terms of the individual variable insurance contract to remove deferred sales charge as a sales charge option and instead accept deposits under a different sales charge option.

12(3) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023 and applying a sales charge option to the deposit other than a deferred sales charge option, if the insurer and insured had agreed that a deferred sales charge would apply to the deposit, but the insurer has withdrawn the deferred sales charge option for future deposits, unless and before the insurer applies the new sales charge option,

(i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, and which at a minimum includes,

(a) a list of sales charge options the insured may choose among,

(b) a description of how each applicable sales charge option works,

(c) the percentage amount of any initial sales charge under each applicable sales charge option,

(d) a description of the relevant management expense ratios, including,

(i) any different charges for different guarantee options,

(ii) what the management expense ratios include, and

(iii) how management expense ratios affect the insured's returns on their investments, and

(ii) either,

(a) the insured agrees to the new sales charge option applying to the deposit, or

(b) a reasonable time elapses, during which the insured does not notify the insurer of the insured's choice of sales charge option, after the insurer

(i) provides the required disclosure,

(ii) notifies the insured of the default sales charge option, and

(iii) notifies the insured of the time until that default sales charge option will apply.

12(4) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge, unless the insured receives written disclosure from the insurer, before the insurer accepts the deposit, that is reasonably designed to help the insured understand the sales charge options available to them and whether making a deposit on a deferred sales charge basis is suitable for that insured.

4113 Coming into Force

~~41(4)~~13(1) This Rule will come into force on the later of the date that section 1 of Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* comes into force and 15 days after the Rule is approved by the Minister.

Appendix C

Effects of UDAP Rule Amendments on Existing IVICs

