

<b>General</b>	
<b>Comments</b>	<b>Response</b>
<p>The majority of commenters supported the goal of protecting customers who own existing contracts that involve deferred sales charges (“DSCs” or “DSC”), but several raised concerns about the proposed method of achieving this goal.</p> <p>Two agents suggested that concerns associated with DSCs are exaggerated, that DSCs are sometimes appropriate for consumers, and that the compensation associated with DSCs is important to financially support new agents when they enter the industry and begin selling individual variable insurance contracts (“IVICs” or “IVIC”).</p> <p>Another stakeholder urged FSRA to implement the DSC changes in a simple, transparent and cost-efficient way.</p>	<p>The Financial Services Regulatory Authority of Ontario (“FSRA”) appreciates the support from stakeholders for the goal of protecting customers who own existing IVICs with DSCs, and appreciates the comments about ways to achieve this goal.</p> <p>FSRA appreciates the submission from the stakeholders who suggested DSCs may sometimes be appropriate, and FSRA agrees that there may be instances where DSCs can be used appropriately. However, on balance, FSRA believes a deferred sales charge option more often leads to unfair outcomes for customers. FSRA’s view is that additional protections are therefore required for customers whose IVICs already involve DSCs.</p>

<b>Amount and Complexity of Disclosure – General</b>	
<b>Comments</b>	<b>Response</b>
<p>Several commenters discussed the amount of disclosure. Some suggested more disclosure, particularly with respect to advisor compensation. Some suggested less disclosure, to avoid overwhelming and confusing customers.</p>	<p>FSRA believes that customers generally need the information listed in the first consultation draft of the Rule in order to make an informed choice about what sales charge option to use for future deposits.</p>

## Complexity and Adequacy of Disclosure – Withdrawal of DSC Option re Pre-Authorized DSC Payments

### Comments

Several commenters raised concerns about proposed requirements for insurers to provide disclosure to customers who had previously arranged for future payments on a DSC basis if the DSC option will no longer be available.

In addition to the general comments about the amount, complexity and adequacy of disclosure to customers, one consumer advocate commenter pointed out that proposed Rule 2 relies primarily on disclosure to address potential consumer harms arising from existing contracts with DSC options. They noted that problems with relying on disclosure for this purpose include: not all consumers will be able to make appropriate choices; they might not receive adequate information about their options; they might not have access to an advisor to provide expert advice; or they may not receive the disclosure, or may ignore it, and may therefore be subject to the default option. This default option may not be appropriate for the consumers. Therefore, disclosure alone is not a satisfactory consumer remedy.

One industry commenter also wrote about the disclosure required for customers whose pre-authorized deposits will move from DSC to another sales charge option. They suggested that where the new sales charge option has no upfront fee, and the ongoing fees would be the same or better for consumers, it would be in customers' best interest to keep the notice simple and concise. They suggested the disclosure proposed in the first consultation would be unnecessarily complicated and detailed in that situation.

### Response

In cases where the insurer proposes a new sales charge option that is better for the customer in all ways than a DSC that is being withdrawn, FSRA believes it is appropriate to allow the insurer to provide tailored disclosure that focuses on the new default sales charge option, instead of requiring the insurer to provide details of all available sales charge options. This approach will help to avoid overwhelming customers with unnecessary information, while providing a motivation for insurers to default customers to an option that is better for them, thus achieving the goal of treating customers fairly.

Therefore, FSRA is proposing a new approach:

- Where an insurer withdraws the DSC option and proposes a new sales charge option that is in all ways better for customers, the insurer will be allowed to provide less disclosure, which focuses on the new default option,
- Otherwise, the insurer will be required to provide the full disclosure previously consulted on.

In either case, the customer will always be able to contact the insurer to change their sales charge option for future pre-authorized payments to any option that is available at that time.

Some of the other commenters agreed that the disclosure would be complex and consumers might struggle to understand it. An industry commenter that represents agents recommended simply banning future DSC deposits for all contracts, as described below, rather than providing disclosure to help customers decide whether these deposits might be suitable for them.

## Frequency of Disclosure

### Comments

The consultation draft did not explicitly state how often disclosure must be given, simply stating the customer had to receive it “before” the insurer accepts a DSC deposit (where permitted) and “a reasonable time” before the insurer applies a new sales charge option to pre-authorized payments where DSC is no longer available. One industry commenter suggested the obligation to provide notice before accepting a DSC contribution, and before applying a new sales charge option to pre-authorized payments, should be a one-time obligation or, in the alternative, an annual reminder.

### Response

FSRA urges insurers to provide disclosure as frequently as is reasonably required to help ensure customers understand their rights and options well enough to make good choices with respect to sales charges on IVICs. FSRA recognizes the frequency of this disclosure may vary depending on the circumstances, such as the number and type of sales charge options that are available under the IVIC and the types of payments (e.g. monthly pre-authorized payments vs. individual ad hoc payments). Therefore, FSRA has not mandated a specific frequency for disclosure.

Note that, for pre-authorized payments, FSRA expects disclosure to occur before the first pre-authorized payment under a new sales charge option, unless the insurer proposes a sales charge option that is unequivocally better. In that case, FSRA expects the disclosure to occur promptly after the first payment under the new sales charge option.

FSRA does not expect the insurer to send the disclosure before each monthly pre-authorized payment.

## Continuing DSC Deposits

Comments	Response
<p>A commenter representing insurers asked FSRA to clarify if insurers are allowed to continue receiving deposits on a DSC basis in cases where the insurer cannot contractually remove the DSC option for future deposits. The commenter noted it would be helpful for FSRA to state affirmatively that DSC deposits can continue where no other contractual option is permitted.</p>	<p>It is FSRA's opinion that an insurer is not acting unfairly or deceptively toward consumers by continuing to receive deposits to an IVIC on a DSC basis where:</p> <ul style="list-style-type: none"><li>• The insurer has provided the disclosure as required under s. 12(8), and</li><li>• The insurer<ul style="list-style-type: none"><li>○ cannot remove the DSC option from the existing contract, and/or</li><li>○ cannot do so without prohibiting the customer from making deposits to the IVIC.</li></ul></li></ul> <p>Under the UDAP rule-making authority, FSRA has the power to prescribe specific actions, omissions and outcomes that are prohibited under s. 439 of the <i>Insurance Act</i> and requirements that, if not complied with, constitute a UDAP. FSRA does not have the power to specify activities that are not UDAPs.</p> <p>For this reason, FSRA has not explicitly stated that insurers can continue to receive deposits on a DSC basis even if the insurer has no contractual right to remove the DSC option from an IVIC for future deposits.</p>

## Legacy Issues with Existing Contracts

Comments	Response
<p>A commenter representing insurers said it may not be possible to switch the sales charge option for some older contracts without a complete overhaul of the systems that administer them. The commenter asked FSRA to take a practical approach to these cases, recognizing the need to administer contracts in an efficient way since</p>	<p>In some cases, insurers may be able to comply with the Rule without removing the DSC option from their systems, such as by implementing controls to prevent deposits on a DSC basis or by changing deposit forms to remove DSC as an option.</p>

<p>these older contracts are often favourable to the contractholder, with features that are no longer offered.</p>	<p>However, FSRA understands there are some situations involving older contracts in which an insurer has the legal ability to comply with Rule 2 but the cost of complying with the Rule, which could be passed on to customers through an increase to the management expense ratio, would be disproportionately high compared to the benefits customers would receive from the changes.</p> <p>Also, FSRA has confirmed there are some circumstances where an insurer could comply with Rule 2 by prohibiting customers from making any further deposits to their IVICs, but this would disadvantage customers because their existing IVICs offer benefits that are no longer offered at a similar price under new IVICs on today's market.</p> <p>FSRA recommends that insurers should contact the regulator if they believe the only practical way to comply with Rule 2 would be to treat customers unfairly. FSRA is open to discussing options in these cases to ensure customers are treated fairly.</p>
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<b>Banning all new DSC Deposits under existing IVICs</b>	
<b>Comments</b>	<b>Response</b>
<p>One commenter recommended that, instead of allowing DSC deposits to continue where the insurer does not have the contractual right to unilaterally remove this option, FSRA should prohibit all future deposits under the DSC option, including deposits to existing contracts. The commenter suggested that if the contract in question does not give the insurer the right to unilaterally eliminate DSCs for future deposits, then future deposits should be made under a new contract.</p>	<p>As noted in the <a href="#">Notice of Rule</a> published on November 25, 2022, FSRA considered banning new DSC deposits on all IVICs but decided against this approach because it would be an extraordinary interference with existing IVICs and could lead to unexpected customer harm. In addition, this approach would not harmonize with the approaches taken in other Canadian jurisdictions.</p>

	<p>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. This is particularly an issue for older IVICs that offer guarantees that are either unavailable under newer IVICs, or unavailable at the same price.</p> <p>FSRA confirms that it does not propose a Rule that would prevent all customers from making deposits to existing contracts and obtaining the benefits of those contracts.</p>
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<b>No retroactive requirements</b>	
<b>Comments</b>	<b>Response</b>
<p>A commenter representing insurers noted that some insurers have already notified their customers of expected changes to DSCs, and said it is important that the new requirements not be given retroactive effect. They said the new requirements should not be deemed to apply to notices provided before the final Rule is published.</p>	<p>FSRA confirms that Rule 2 will only apply to transactions that occur after the new Rule takes effect.</p> <p>However, it is important to be clear that Rule 2 will apply to all transactions that occur after it takes effect, even if an insurer has provided disclosure to consumers about those transactions before the amendment is finalized.</p>

<b>Clarity of Rule</b>	
<b>Comments</b>	<b>Response</b>
<p>Some commenters raised concerns about the wording of the proposed Rule, suggesting it was difficult for industry and the public to understand. One asked FSRA to confirm that insurers are allowed to continue to accept deposits on existing IVICs on a DSC basis where no other option is available, and to clarify that the requirements should not apply to notices that were sent before the Rule was published.</p>	<p>FSRA recognizes the challenges of drafting positive obligations through prohibitions under its UDAP Rulemaking Power.</p> <p>FSRA confirms that the intention behind the proposed Rule is that insurers will be allowed to continue to accept deposits on existing IVICs on a DSC basis where no other option is available, if the insurers meet the disclosure obligations under the Rule.</p>

<b>Effective Date and Implementation Timeline</b>	
<b>Comments</b>	<b>Response</b>
<p>One commenter indicated that although insurers are working to update their products in advance of June 1, 2023, the deadline was quite tight from an operational perspective and that 18 to 24 months should usually be allowed between publishing a final rule and applying it to the industry.</p> <p>Another commenter recommended implementing Rule 2 at the earliest opportunity.</p>	<p>In February 2022, CCIR and the Canadian Insurance Services Regulatory Organizations (“CISRO”) announced that regulators across Canada would work to ban DSCs on segregated fund contracts by June 1, 2023. However, FSRA recognizes that the details of Rule 2 are not contained in that announcement.</p> <p>FSRA appreciates the steps insurers need to complete to comply with the DSC obligations in Ontario will depend on the final wording of FSRA’s Rule. FSRA will take this into consideration as FSRA moves forward with supervisory efforts.</p>

<b>Harmonization</b>	
<b>Comments</b>	<b>Response</b>
<p>Some commenters emphasized the importance of a harmonized approach to DSCs. One focused on harmonization of national insurance requirements. Others supported harmonization as compared to mutual fund requirements.</p>	<p>FSRA recognizes that national harmonization is important and that insurers must be able to comply with their obligations in all jurisdictions. However, in light of the long-term nature of the contracts involved, FSRA considered it a priority to take steps outlined in Rule 2 to protect customers whose existing IVICs allow future deposits on a DSC basis.</p> <p>If insurers who seek a national solution are concerned that following Rule 2 would cause them to be in noncompliance with laws in other provinces then FSRA would be pleased to participate in discussions with other provinces to encourage national harmonization.</p>

<b>Other Upfront Compensation</b>	
<b>Comments</b>	<b>Response</b>
<p>A few commenters discussed upfront compensation generally, outside DSCs. Two commenters urged FSRA, in its work with CCIR and CISRO, to consider banning all upfront compensation including compensation under the advisor chargeback sales charge option.</p> <p>One consumer advocate commenter recommended that FSRA should provide additional guidance about the range of alternative sales charge options permitted and ensure insurers do not offer the advisor chargeback option in place of deferred sales charges.</p> <p>In contrast, two agents raised concerns about recent regulatory and consumer advocate criticisms of upfront commissions and suggested</p>	<p>Until CCIR and CISRO issue guidance with respect to their consultation, FSRA notes that:</p> <ul style="list-style-type: none"> <li>• Where insurers and customers have agreed to contracts (i.e. IVICs) that involve the Advisor Chargeback sales charge option, this option is available for future deposits</li> <li>• The Advisor Chargeback sales charge option does, however, create conflicts between the interests of customers and the agents who serve them</li> </ul>



<p>there may be unintended consequences of removing upfront compensation, including access to advice for Canadians.</p>	<ul style="list-style-type: none"> <li>• This option may motivate agents to recommend clients retain investments in segregated funds that no longer match the clients' interests</li> <li>• This issue does not arise where a customer has chosen a DSC (although the DSC option does involve other conflicts that do not apply to the Advisor Chargeback option)</li> <li>• Therefore, the Advisor Chargeback option is not in all ways better for the customer than the DSC option</li> </ul> <p>For these reasons, FSRA has decided that an insurer will not be able to use the focused (less-detailed) disclosure if the insurer replaces the DSC option for future pre-authorized payments with the Advisor Chargeback option.</p>
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<b>Other</b>	
<b>Comments</b>	<b>Response</b>
<p>One commenter encouraged FSRA to monitor industry practices before the amendments take effect, to avoid a rush to sell IVICs with DSCs before the Rule takes effect.</p>	<p>FSRA will continue monitoring the use of sales charge options in the sector. FSRA expects insurers and agents to sell customers products that are suitable to their needs.</p>