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**Via email**

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
comments@osc.gov.on.ca

**RE: ONTARIO SECURITIES COMMISSION NOTICE AND REQUEST FOR COMMENT: PROPOSED ONTARIO SECURITIES COMMISSION RULE 81-502 RESTRICTIONS ON THE USE OF THE DEFERRED SALES CHARGE (DSC) OPTION FOR MUTUAL FUNDS**
https://www.osc.gov.on.ca//en/NewsEvents_nr_20200220_osc-proposes-rule-to-restrict-use-of-deferred-sales-charge-option.htm

I appreciate the opportunity to provide comments on these proposed restrictions. These restrictions attempt to mitigate the negative investor outcomes associated with the purchase of mutual funds under the deferred sales charge option.

I write on my own behalf and on behalf of MBC Law Professional Corporation's Financial Loss Advisory Group. Our firm routinely represents investors who seek redress from retail financial services firms, both investments and insurance. We also represent advisors in regulatory matters and contract disputes.

We are writing to express our views on proposed OSC Rule 81-502 *Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds* ("Ontario's proposal"). We commend the OSC for its work on this issue given that its long work to champion a Deferred Sales Charges ("DSC") ban, the consensus it reached with the CSA colleagues, and the Ontario Government's political shenanigans that followed the joint announcement by the CSA of a national initiative. This political interference harmed the reputation of the OSC as an evidence-based regulator, a key member of the CSA and as an independent regulator.

Empirical research unequivocally shows that DSCs are used to incent advisors to prefer their own interests to earn upfront commissions over those of the client. Studies show that this harms investors. Salespersons often say that the client does not pay, the fund does, which is to false and misleading statement.

We agree with the Canadian Securities Administrators ("CSA") that DSCs are harmful to investors. Ample evidence supports this conclusion. Correspondingly as noted by the CSA, there is no evidence that shows investors benefit from DSCs. Thus, empirical informed regulations can only result in the rejection of Ontario's proposed continuation of DSCs except if you consider the political interests of the present Government of Ontario and certain industry players.

Ontario's government has chosen to reject the evidence of the OSC. For many years, the OSC has independently debated and studied policy and urged its CSA companions to eliminate DSCs in order to protect Canadians from a rarely, if ever, defensible industry practice. The OSC has now been required by its political task masters to reject the investor protections developed by its colleagues at the CSA. Instead, Ontario has chosen to support a small portion of industry's lobbying influence. A decision that will harm Ontarians.

With DSC there is no positive correlation between the quality of advice and the amount paid but the empirical evidence shows that high DSC is inversely related to the investor achieving positive outcomes.

We note the Bank of Montreal's recent decision to cease these offensive charges. We commend this much delayed, but welcome, decision. Given that Ontario proposes to be out of step with the rest of Canada, we are hopeful that market forces will result in other national dealer members rejecting a dual system for their Canadian assets: one for all of Canada except Ontario which takes into account a fair dealing for investors, and one for Ontario which favours dealer member lobbying.

The present Ontario does not treat all Ontarians equally.

- Ontarians with large accounts will be protected but account of smaller investors will be open to further DSC victimization.
- Older Ontarians will receive some protections, but our youth will not be protected from this predatory advisor recommended DSC
- DSCs are used to incent long term investing regardless of client objectives and risk capacity – concrete handcuffs.

In addition to investor risk, there is a material risk to dealing representatives. Because DSC are inherently a conflict-of- interest, all registrants are at risk when selling DSC compensated funds:

- Informed consent defence
- Disclosure of the fee charged, and the impact of the fee on investor outcomes must be made in a way that is reasonably likely to be understood by the investor (not some mythical investor deeply schooled in finance and legal language). I have never seen this done in my career in an objectively reasonable manner.
- Must overcome the presumption that the conflict-of-interest was disabling.

- Must show that superior alternatives were not available.
- Where a higher fee grid product is recommended, an almost impossible presumption to rebut.
- Must plainly disclose in plain language the full risks of the DSC option with backup notes.

All in all, DSC mutual funds have no redeeming values for the retail investor.

I recommend that the OSC harmonize with the CSA and ban DSC sold mutual funds. I also recommend that the OSC implement a DSC ban as quickly as possible as waiting until June 2022 which needlessly exposes Ontarians to material financial harm that will extend as far as 2028. This is not consistent with the mandate of the OSC to protect investors from harm.

Please feel free to contact me if any questions.

Yours truly,

Harold Geller