

July 16, 2025

Sent Via email

The Secretary,

Ontario Securities Commission

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cc Provincial securities Regulators

CSA Notice and Request for Prohibition on the Use of Chargebacks in the Distribution of Investment Fund Securities <https://www.securities-administrators.ca/news/canadian-securities-regulators-propose-prohibiting-the-use-of-chargebacks-in-the-distribution-of-investment-funds/>

[Canadian securities regulators propose prohibiting the use of chargebacks in the distribution of investment funds - securities-administrators.ca](https://www.securities-administrators.ca/news/canadian-securities-regulators-propose-prohibiting-the-use-of-chargebacks-in-the-distribution-of-investment-funds/)

Toronto and Montreal – The Canadian Securities Administrators (CSA) has published, for a 90-day comment period, proposed amendments that would prohibit the use of chargebacks in the distribution of investment funds offered by prospectus. Dealers or dealing representatives sometimes receive an upfront commission or payment when their client purchases securities. Chargebacks occur when clients ...

[www.securities-administrators.ca](https://www.securities-administrators.ca)

I am writing in response to the consultation on your proposal to prohibit chargebacks (sometimes referred to as retro-commissioning) in the investment fund industry (this would not include Segregated funds sold by insurance agents not regulated by securities regulators).

As I understand it, when a fund salesperson sells a fund she/he receives a considerable commission upon sale. If the client sells the fund for any reason during a defined chargeback period, the Firm has the right to recapture some or all of the sales commission paid upfront to the salesperson. Apparently, this would apply even upon death of the client! The issues surrounding such a mechanism are serious from any perspective. I simply do not comprehend why the Canadian Securities Administrators (CSA) needs a consultation to prohibit this oppressive, unfair compensation model. The inherent irreconcilable conflicts-of-interest and potential investor harm are glaringly apparent. This practice should clearly be abolished without the need for a lengthy consultation.

First, under the June 30, 2021, Client Focussed Reforms (CFRs) conflicts-of-interest requirements, registrants must take reasonable steps to identify existing and reasonably foreseeable material conflicts of interest, and must address those material conflicts in the best interest of clients. If there is no way to address the material conflicts of interest in the best interest of clients using controls, those conflicts MUST be avoided. Chargebacks represent material conflicts that clearly cannot be addressed, so are to be avoided.

Second, the salesperson will be reluctant to recommend redemption since this will adversely impact her/his pay. This reluctance to act would cause the client to hold on to an unsuitable or underperforming mutual fund, impairing retirement income security. Supervisors may be reluctant to intervene because this could negatively impact salesperson morale at the branch.

Third, as a HR practice it seems more fitting for 1890 than 2025. Licensed salespersons should not be treated as indentured slaves.

Fourthly, this compensation model is a slap in the face to securities laws regarding fair dealing, advice in the best interests of clients, honesty, integrity and acting in good faith.

And finally, chargebacks have the effect of a Firm unloading their responsibility onto the lowest person on the totem pole due to the profit motive. Supervisors approved the sales transaction. The Firm should also be required to return the upfront commission to the source that provided the upfront funding. (a mutual fund Company or the mutual fund itself) if chargebacks are not prohibited.

“I don’t think it’s enough that we simply have examination findings and tell people they need to do better. At a certain point, we really need to hold firms to account.” - Grant Vingoe, CEO, Ontario Securities Commission [https://www.investmentexecutive.com/newspaper/\\_news-newspaper/osc-has-conflicts-of-interest-in-its-crosshairs/](https://www.investmentexecutive.com/newspaper/_news-newspaper/osc-has-conflicts-of-interest-in-its-crosshairs/) (see also REFERENCE)

I respectfully recommend that the CSA promptly direct Firms to cease using chargebacks and apply impactful sanctions on Firms that fail to comply.

Permission is granted for public posting of this letter.

Thank you for the opportunity to provide feedback on the chargeback consultation.

H. Buksa

REFERENCE: Joint Canadian Securities Administrators / Canadian Investment Regulatory Organization Staff Notice 31 – 363 Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance, Aug. 3, 2023

<https://www.ciro.ca/newsroom/publications/joint-canadian-securities-administrators-canadian-investment-regulatory-organization-staff-notice-31>