

July 16, 2025

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CSA Notice and Request for Comment Draft Amendments to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations Prohibition on the Use of Chargebacks in the Distribution of Investment Fund Securities

I greatly appreciate the opportunity to provide input on this consultation paper.

I am however very concerned that such a consultation (90 days!) is needed. If the CSA requires public opinion on such an inherent material conflict-of-interest, how can we expect supervisors and compliance staff to do their jobs as regards conflicts-of-interest determinations?

It is no surprise that the 2023 CSA review (see REFERENCE) of compliance with Client Focussed Reform (CFR) conflict-of-interests rules was so concerning and OBSI reports record levels of investor complaints. It may be that the CFR rules regarding conflict-of-interest need better definition and/or that industry participants need additional training.

By design, a fund sold under the chargeback model pays the advisor an upfront sales commission. This scheme can cause the advisor to recommend a fund that is more expensive than other cheaper alternatives. This can result in reduced fund performance over the longer term and impair retirement income security.

In any event, advisor chargebacks put the licensed representative (advisor) in a no-win position, if the advisor recommends redemption because the fund is underperforming the advisor would incur an out-of-pocket expense. If the advisor does not recommend redemption when such redemption is in the best interests of clients, the advisor is open to disciplinary action by regulators.

In a April 2, 2025 letter (https://faircanada.ca/wp-content/uploads/2025/04/2025_04_02_Comment-Letter-Segregated-Fund-Guidance-CCIR-and-CISRO_Eng_ver.0.pdf) to the Ontario insurance regulator, FAIR Canada provided solid rationale for disapproval of advisor chargebacks. At the same time, the letter pointed out that the inherent conflict-of-interests is irreconcilable.

If advisor chargebacks are not prohibited, regulators should not permit any advisor subjected to chargeback, to use the Financial Advisor title. Regulators should provide educational materials to financial consumers so they can avoid material conflicts. Periodic Consumer ALERTS should also be issued. Regulators should require Firms to provide or make available periodic statistics on the frequency and dollar amount of chargebacks received from employees. One can reasonably expect a further decrease of mutual fund sales, a reduced trust in Advisors and regulators and continued transition by retail investors to DIY investing.

If the source of the upfront commission cash was the fund Company (for the fund redeemed), is the Firm required to return the upfront commission? If not, then why is the advisor required to return her/his portion to the Firm but the Firm retains the full upfront commission?

As a consumer, it is very clear to me that significant potential investor harm exists in the advisor chargeback model. I totally support prohibition of advisor chargebacks, the sooner the better. Provincial governments may want to ensure that provincial insurance regulators also implement a ban so that insurance consumers are not harmed.

Tim Carter

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>

cc:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon

Superintendent of Securities, Nunavut