FAIR Canada Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

September 15, 2025

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

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Re: Proposed Amendments to National Instrument 31-103: Prohibition on the Use of Chargebacks in the Distribution of Investment Fund Securities

FAIR Canada is pleased to provide comments in response to the above-referenced consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.[1]

[1] Visit www.faircanada.ca for more information.

A. Introduction

FAIR Canada supports the Canadian Securities Administrators' (CSA) proposed ban on advisor chargebacks (ACBs) in the distribution of investment fund securities.

ACBs—where advisors receive an upfront commission that is later clawed back if a client exits an investment within a specified period—create inherent conflicts of interest between advisors and their clients. These conflicts cannot be adequately managed through disclosure or otherwise. First, an advisor may be incentivized to recommend products with ACBs because they provide higher upfront commissions rather than cheaper, equally suitable products without ACBs. Second, this conflict may lead an advisor to recommend against selling the product, even though it would be in the client's best interest, because the advisor may be required to pay back some of the commission.

We commend the CSA for advancing this regulatory reform that prioritizes investor interests and would enhance the integrity of Canada's capital markets. Compensation arrangements can have a detrimental effect on investor outcomes. The recent report on the sales culture at bank-affiliated dealers showed that compensation structures can induce advisors to prioritize sales targets over client interests and increase the risk of unsuitable recommendations.[2] By addressing ACBs, the CSA can foster a fairer and more trustworthy investment landscape for Canadians.

We strongly recommend that the CSA extend the ACB ban to include non-reporting issuers and all securities under their jurisdiction. The core investor protection concern—the conflict of interest inherent in ACBs—exists regardless of issuer type or product classification.

Below, we address the consultation questions in greater detail and offer revised wording for the proposed provision regarding compensation practices in National Instrument 31-103.

B. Ban ACBs for Non-Reporting Issuers and All Securities

We strongly believe that securities of investment funds issued by non-reporting issuers should be subject to the proposed ban. In addition, the prohibition should extend to all types of securities under the CSA's jurisdiction. Our position is grounded in the following three arguments.

1. The Conflict of Interest Does Not Depend on Reporting Status or Product

The central problem with ACBs is the misalignment of advisor and client interests, which arises irrespective of whether the fund is a reporting issuer or the product type. Whenever advisors are compensated in a manner that is contingent on client actions, their incentive to act in the client's best interest is compromised. The nature of the issuer (reporting or non-reporting) or the product does not alter this fundamental conflict.

The rationale for banning ACBs is equally compelling for segregated funds, which are similar to investment funds but classified as insurance products. To ensure consistent investor protection

[2] Ontario Securities Commission and Canadian Investment Regulatory Organization, Sales Culture Concerns at Five of Canada's Bank-Affiliated Dealers, July 9, 2025.

across financial products, we recommend that the CSA encourage insurance regulators to prohibit the use of ACBs in the sale of segregated funds and similar insurance products.

A comprehensive ban on ACBs would send a resounding message: clients must come first, in every market and irrespective of how the product is classified. Consistent rules are fundamental to investor protection. Holding all products and market participants to the same standard ensures equal protection for investors from misaligned incentives, regardless of whether they are investing in public or private funds or other securities.

2. Registrants Exhibit Deficiencies in Identifying and Managing Conflicts

The client-focused reforms (CFRs) require advisors to identify, disclose, and address material conflicts in the client's best interest across all types of securities, not just investment funds. In the context of ACB arrangements, this means an advisor must identify the conflict that ACBs present, disclose it to the client, and recommend a sale when doing so aligns with the client's best interest, even if it would result in the advisor having to return their commission.

Yet many firms have fallen short of these standards. A regulatory review revealed numerous deficiencies. Several registrants failed to identify material conflicts of interest, and over half had incomplete or missing disclosures relating to such conflicts.[3] Alarmingly, 66% of firms had inadequate policies and procedures for addressing conflicts, seriously undermining the spirit and effectiveness of the CFRs.[4]

The widespread lack of compliance with the CFR conflict-of-interest provisions raises serious doubt that advisors would reliably identify, disclose, and effectively address the conflict inherent in ACBs. This fundamental concern reinforces the necessity for an outright ACB ban across all types of securities as the most effective way to safeguard clients' interests and ensure robust investor protection.

3. Prevent Regulatory Arbitrage

Limiting the chargeback ban to investment funds of reporting issuers, or only to products where ACBs are currently used, creates loopholes that could be exploited through regulatory arbitrage. Advisors and firms may simply migrate ACBs to other products, circumventing the spirit of the regulation and exposing investors to the very risks the ban is designed to address.

By applying the prohibition to all securities, whether investment fund or non-investment fund, reporting issuer or non-reporting issuer, the CSA would ensure that ACBs cannot simply be relocated to other securities. This comprehensive approach promotes consistent investor protection by holding all products and market participants to the same standard.

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Thank you for considering our comments on this critical issue. As investor advocates, we appreciate the opportunity to share our perspective and help shape policies that put clients first. We welcome ongoing dialogue and collaboration with the CSA and other stakeholders to build a

[3] Joint CSA / Canadian Investment Regulatory Organization – Staff Notice 31-363 - Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance, August 3, 2023.
[4] Ibid.

fair, transparent, and resilient investment environment for all Canadians. If you would like to discuss our submission further, please reach out—we are committed to working together to support better outcomes for investors.

Sincerely,

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights