Via email September 20, 2018

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CSA Notice and Request for Comment
Proposed Amendments to National Instrument 81-105 Mutual Fund Sales Practices and Related Consequential Amendments
http://www.osc.gov.on.ca/documents/en/Securities-Category8/csa_20180913_81-105_mutual-fund-sales.pdf

I am commenting on these proposals under great frustration, strain and emotion. The recent CSA decision to abandon an overarching Best interest standard and go along with the retention of embedded commissions has had an incredibly negative impact on all investor advocates. Ten years of hard work gone down the drain on June 21st. And now investor advocates are being asked if two materially harmful sales practices should be prohibited against a backdrop of an Ontario Government that doesn't support even these tiny reforms. This sudden about face by Ontario follows six years of consultation, debate and research among regulators, the investment industry and investor advocates into long-standing issues about retail investor protection, and market fairness and efficiency in the retail investment business. Surely, the CSA must sense the cynical mood of the advocacy community and individual Canadians .

It seems to me that the CSA is asking for comments on issues that the average Canadian feels do not require consultation. These issues have required affirmative regulatory action for a long time. It's not as if the CSA was unaware of the pillaging of the retirement savings that was taking place. Investor advocates, media, academia and ordinary Canadians have been pleading for regulators to step up to their role as protectors for Canadian retail investors. They were met with a wall of silence and responsiveness that a glacier would find slow.

The effect of the DSC and the adverse impact it has had on life savings is well documented and supported by mountains of evidence accumulated over the last decade. It has caused untold misery and anguish for families, seniors and retirees.

The selling of A series mutual funds by discounters has been allowed to rob tens of millions of dollars every year from Canadians in plain sight. Assuming an average trailing commission rate of 0.76 % and $25 billion in A series assets held at discount brokers we see an annual carnage of about $190,000,000 taken away from retail investors for" advice" and unknown services that regulators and discount brokers knew could not and would not ever be provided. Yet nothing was done to protect these victims of unfair pricing and exploitation. They were not dealt with honestly and in good faith by anyone. This was all done in full view of the CSA and continues even today.

It is ironic and sad that the CSA is once again asking victims to comment on practices that have permanently impaired their nest eggs. The CSA and IIROC should be ashamed that they are asking victims to comment on predatory practices that everyone knows are illegal, improper, unethical and immoral. The CSA have created a Caveat Emptor environment which they must now vow to fix and simultaneously repent.

The vision of the CSA should be that of making advice and the advice industry professional. There is no evidence that the CSA has such a vision. It certainly has not publicly revealed it if it exists. I stand ready to support the CSA if it sincerely pursues such a vision.

I note that the Kenmar OPEN Letter asking that there be no consultation because the CSA knows what needs to be done was not acted upon. Ref *Open Letter to the CSA on embedded commissions and DSC* http://www.canadianfundwatch.com/2018/08/open-letter-to-csa-on-embedded.html Yet another consultation has been released as the procrastination continues.

Having gotten that off my chest, I provide comments as indicated below.

The Deferred Sales Charge option

"Show me a leveraged portfolio, and I'll nearly always show you an investment account filled with DSC mutual funds, sold by a novice financial planner to a couple who are already fighting mortgage, car and line-of-credit payments"—Harper Fraze (**Harper Fraze is a pseudonym.** He is an investment advisor with a large, Canadian-based financial services firm he cannot name.)
https://www.advisor.ca/my-practice/conversations/compensation-debate-rages-on/

I fully agree with the proposal to ban DSC sold mutual funds as I have since at least 2004 when I served on a committee of the now defunct Fair Dealing Model (2004). Along with CSA research and findings, my blog http://www.canadianfundwatch.com/2015/09/the-dsc-sold-mutual-fund-under.html *The DSC sold Fund Under the Microscope* articulates the toxic nature of the DSC sales option.

In a registered account, any early redemption DSC fees incurred reduce retirement savings and are not tax deductible. The DSC pain is present even when a fund unilaterally decides to close down. The rules applicable to fund mergers/terminations in NI 81-102 do not require that DSC unitholders be allowed to redeem without incurring a redemption fee in those circumstances. Unitholders must switch to another DSC fund in the same family or redeem. Further, even when an investor passes away, the DSC still applies - it is like a cancer that won't go away. It appears that after much client pain and suffering that the CSA is finally up to addressing the DSC issue.

My immediate concern however is that the Government of Ontario has publicly undermined its own Securities Commission in not supporting the proposed Amendments on prohibition of DSC and discount broker sales abuses. https://news.ontario.ca/mof/en/2018/09/statement-on-the-ontario-securities-commissions-proposal-regarding-the-mutual-funds-industry.html . The Government of Ontario's public criticism of the Proposed Amendments is a significant departure from historical practice that has involved the securities regulators pursuing policy consultation – it effectively undermines the stature of the OSC. Regardless of the relative merits of the respective positions of the Ontario Government and the OSC, this intervention is troubling. The proposals were in the Public interest based on much hard work by all stakeholders including OSC staff. If the rule changes are delayed or blocked as a result of this unwarranted meddling, the Ford Government must be held fully accountable to millions of families and individuals for impairment of their nest eggs. See **Ontario's Ford government is shamefully backing the investment industry over investors**
https://www.theglobeandmail.com/investing/personal-finance/household-finances/article-governments-deal-a-one-two-punch-to-consumer-protection/ It is a disturbing turn of events to see the Government meddle before stakeholder comments have even been received by the Commission.

Some reputable dealers in the mutual-fund industry have wisely discontinued the sale of DSC mutual funds. In Sept. 2016 Investors Group announced it would be discontinuing the DSC purchase option as of Jan. 1, 2017. In March 2017 Toronto-based Dynamic Funds announced plans to eliminate the deferred sales charge (DSC) purchase option for all the products within its lineup. A rough estimate of DSC fund assets from the analysis firm Strategic Insight put them at 13 % of the total last year, down from 26 % in 2012. Even at this reduced level they are 13X what American investors experience.

A ban on the DSC purchase option will force some fund dealers to change their business model or exit the business. That would improve investor protection.

The OSC Investor Advisory Panel recommended that a retroactive trigger on the proposed DSC Rule should be incorporated in the Consultation – it was not adopted. http://www.osc.gov.on.ca/documents/en/Securities-Category8/com_20180820_81-330_iap.pdf. Ignoring the counsel of the IAP will needlessly cost Canadians a lot of money and stress especially if there is a market downturn. I urge the CSA to reconsider.

The proposals have a short 90-day comment period ending Dec. 13th.It assumes a one-year transition period for dealers from the time final rules are finally adopted. The Paper indicates that it doesn't expect firms to convert existing mutual funds sold with DSCs into a different sales charge option. Those redemption schedules would be allowed to run until expiry <u>and firms would also still be able to sell DSC funds during the transition.</u> This is problematic.

As dealers will continue to be allowed to sell mutual fund securities under the DSC option during the 365 calendar day transition period, I fully expect some dealers to exploit this loophole and dramatically accelerate DSC fund sales. This policy pretty well guarantees that the DSC fund will exist for a very, very long time. Obviously, I disagree with this light touch treatment of a practice the CSA knows causes investor harm. As an absolute minimum, I would expect that the CSA will require buyers of such funds to be told (via an Investor ALERT) they are buying a dinosaur product AND that they have the option of not reinvesting distributions in the DSC series Additionally, clients should be reminded of the annual 10% DSC Free option. Actually, that should be done right now.

The consultation Paper states: "*We anticipate that the proposed transition period will provide sufficient time for dealer firms and representatives who currently make substantial use of the DSC option to transition their practices and operational systems and processes to the use of other sales charge options. We expect they will increase their use of the front-end load option or other direct-pay arrangements with their clients.* "Maybe they will, but maybe dealing representatives will use this window of opportunity to crank up short term fee revenue by turbo boosting sales of DSC Funds. That would be a tragic unintended effect of the new rules if allowed to occur.

This initiative, if approved, will help ensure that Canadians saving for their children's education or their own retirement will not be exposed to the harmful effects inherent in the DSC sold mutual fund.

The Discount broker scam

"A Toronto man says his "head exploded" when he learned he'd lost more than $60,000 from his retirement nest egg by paying fees for financial advice he never got — and that his broker isn't legally allowed to provide. "Investors are getting screwed," said Steve Pozgaj…." Source *Controversial commissions: DIY investors fight back against trailer fees* https://www.cbc.ca/news/business/do-it-yourself-investors-charged-trailing-commissions-for-no-advice-1.4820813

Since at least 2005 consumer groups have pointed out the exploitation of DIY investors and demanded that IIROC and its predecessor IDA to stop it .It was not until April 9th of this year that IIROC finally issued a rather convoluted Guidance (since rescinded) on the matter [http://www.iiroc.ca/Documents/2018/457fdb2b-f71a-4c7a-88a6-5510c127ccd4_en.pdf]. The Guidance permits the sale of A series mutual funds by discount brokers, a practice that even fund industry lobbyist IFIC disagrees with. Rather than require discount brokers to deal fairly, honestly and in good faith and eliminating a conflict-of-interest, IIROC says it expects the firm to "address the conflict by **rebating** to the client the portion of the trailing commission for ongoing advice, or taking other similar steps". The CSA should compel IIROC to direct its discount broker Members to stop selling Series A funds to their clients. That would be the proper thing to do. Alas, this is not to be.

The good news arising from the IIROC Rules Notice is that it sets a benchmark for Client complaints and Class actions.

"We *are starting to approach these issues from the perspective of considering how our [discount-brokerage] dealers can meet their obligations under our conflicts-of-interest rule if offering the Series A funds. Those are the areas that we have started to explore. We have not reached any conclusions at this time about what our next step will be*." -Marsha Gerhart, vice-president of member regulation policy at IIROC Source: **Discount brokerage Series A funds come under regulatory scrutiny** – The Globe and Mail Sept. 28, 2017 https://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/discount-brokerage-series-a-funds-come-under-regulatory-scrutiny/article36428147/ This is regulator-speak justifying continued inaction in the face of annual multi-million dollar harvesting of investor retirement savings by IIROC Member firms. One thing it certainly is not, is INVESTOR PROTECTION. Our suggestion to IIROC: Say "Cut it out **or you will face sanctions in proportion to the wrongdoing and hardship you are creating."**

In Staff Notice 81-330 the CSA stated:
"*In our view, the fees paid by a vast majority of DIY investors in this channel do not appear to align with the execution-only nature of the services they receive. We also observe no justifiable rationale for the practice of paying discount brokerage dealers an ongoing trailing commission for the sale of a mutual fund. For example, other securities including most ETFs are commonly purchased and sold by way of an upfront transaction fee. This ongoing payment may therefore be viewed as one*

that incentivizes the distribution of mutual funds that pay such an ongoing fee over those that do not (i.e. a payment for shelf space), giving rise to a conflict of interest. This is especially the case when the discount brokerage receives the same trailing commission as that of full-service dealers (which rate is typically intended to compensate full service dealers for the costs associated with providing investment advice). Moreover, in our view this fee also limits investor awareness and understanding of the fees associated with the purchase of such products in the discount brokerage channel." http://osc.gov.on.ca/documents/en/Securities-Category8/csa_20180621_81-330-status-report.pdf This was self-evident to regulators a decade ago.

There is no need for this consultation whatsoever if IIROC would just live up to the first part of its marketing and promotion: **"Protecting Investors and Supporting Healthy Canadian Capital Markets. "**

On the flip side I have a tough question for the CSA. Why did the CSA not enforce the fiduciary standard on the fund companies for all these years? This raises the question also of whether existing fund governance rule NI81-107 is adequate to protect fund unitholders. Investors deserve answers.

Instead of consulting on this matter, why not simply issue a **Show Cause** letter to fund companies to explain why they should not be prosecuted for a breach of fiduciary duty?

Per the consultation paper a trailing commission is defined as
Consistent with the definition of "trailing commission" in NI 31-103, we broadly define "trailing commission" to mean any payment that is part of a continuing series of payments related to the ownership of securities of a mutual fund by a client of a participating dealer. This definition is accordingly not restricted to payments intended to compensate dealers and their representatives for advice afforded to clients, but rather captures payments for all services of any kind to the client in connection with their ownership of mutual fund securities.

I find this definition awkward. I recommend the definition be amended to say: **A trailing commission is any payment by a mutual fund company to an investment dealer that is part of a continuing series of payments directly related to a client's ownership of a mutual fund.**

In proposed new sections 4.1.1 and 4.1.2 of 81-105CP, the CSA clarify that, while fundcos would, further to the repeal of section 3.1 of NI 81-105, be prohibited under the existing general prohibition in section 2.1 of the Instrument from paying sales commissions to participating dealers, this would not preclude them from facilitating the payment of a sales commission negotiated and agreed to exclusively between the dealer and the mutual fund investor. As an example, the CSA say they would not consider the prohibition in section 2.1 of the instrument to be breached where a participating dealer remits to a fund organization the gross proceeds of an investor's purchase of mutual fund securities from which the fundco then deducts and remits the service fee portion to the participating dealer on the investor's behalf pursuant to instructions received from the dealer.

I am not opposed to this convoluted payment structure unless such a process flow would impact CRM2 reporting accuracy. I would want the CRM2 report to show that the service payment was made by the client and NOT by the fundco and trade confirmation slips to accurately reflect the true nature and cost of the transaction.

The Consultation Paper proposes to prohibit mutual fund managers from paying, and investment dealers from soliciting and accepting, trailing commissions (whether for advice or any other service), where the dealer does not make a suitability determination in connection with the distribution of prospectus qualified mutual funds. This is to address potential conflicts in the discount brokerage channel and other instances where dealers do not make investment recommendations, as well as to better align the fees investors pay with the advice/services they actually receive. http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20180621_81-330-status-report.htm I certainly agree with this despite its indirect approach to the problem.

I urge the CSA to expand the scope of the proposed rule changes beyond mutual funds. Supplementary guidance should explicitly state that any security with an embedded fee or commission for a service / advice that cannot be provided by the discount broker should not be available on their platform. My concern is that ETF's will exploit the gap in regulation and start offering a series with embedded commissions.

The incredibly creative mutual fund industry may find other ways to compensate dealers thereby continuing the conflict. For instance, they could find some ingenious way to pay for shelf space, pay a premium rate for fund trading activity, step up cooperative marketing activity or employ some new yet undiscovered reward scheme. I am always mystified by how banks and other large financial institutions utilize *internal transfer payments* with affiliated companies to muddy the waters e.g. the fund manufacturer collects trailers and then uses some magic transformation process, reclassifies them as an inter-unit transfer payment and Voila, trailers per se are not paid to affiliated dealers.

It is my firm conviction that the CSA should explicitly state that there should be no payments or inducements of any kind from fund manufacturers to discount brokers. This would complement the indirect approach requiring the "suitability determination" (as set out in proposed section 13.3 of NI 31-103 (i.e. the "Client Focused Reforms" proposed on June 21, 2018) to be effected.

Class action lawyers should not have to do the CSA's job. The proposal from the Canadian Securities Administrators (CSA) is being made just a few months after a $200 million class action law suit was filed against TD Asset Management Inc. (TDAM) and another $200 million suit against (Scotiabank's) 1832 Asset Management L.P. and as of Sept. 19, CIBC in regard to trailing commissions paid to discount brokers on A series mutual funds.. It is noteworthy that the case was against the fund manager and not the discount broker suggesting fund governance is the core issue.

IMPORTANT NOTE: The improper trailer payments by certain fund companies to discount brokers has also caused indirect but material harm to DIY investors. High performance mutual funds that do not pay trailers are generally not available at certain discount brokerages. This is particularly noted when a fundco and discount brokerage are related parties. To the extent practicable, the proposed Amendments must be written in such a way that third party funds are not unduly excluded from discounter platforms. Addressing this conflict-of-interest could have a tremendous positive effect- it would make lower cost, higher performing funds available to ordinary Canadians. We expect the CSA to do everything possible to mitigate this inherent conflict-of-interest. See **Why DIY investors are being blocked from buying some of Canada's lowest-cost funds** - The Globe and Mail https://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/the-hidden-hurdle-for-canadian-investors/article36151221/

Response to specific Questions

Q2. *Would the proposed repeal of section 3.1 of NI 81-105 have the expected effect of eliminating all forms of the DSC option? If not, what other measures should be taken to ensure that all forms of the DSC option are eliminated?*

It may or may not have the expected effect. I am always amazed at how the fund industry finds loopholes. I recommend specifically adding;" For greater clarity, the regulatory intent of these provisions is to prohibit any form of a deferred sales charge option for a mutual fund "in the final version of the Amendment.

Q 5. *We expect that fund organizations will make available a trailing commission-free class or series of securities of a mutual fund to participating dealers who do not make suitability determinations. Would fund organizations have any issues with making available a class or series of securities of a mutual fund without trailing commissions to such dealers?*

I believe that only the F class series (or equivalent) should be sold by dealers who do not provide advice or clearly defined unique services. Actively- managed ETF's are sold on a transaction basis (typically below $10.00) and that is how I would expect a mutual fund stripped of all ongoing advice and service expenses to be priced .If some discount brokers cannot effect this, they should gracefully exit that market. I believe that actively-managed ETF's, traditional ETF's and regular securities can fully satisfy the portfolio construction needs of DIY investors. I recommend again however that IIROC OEO Guidance http://www.iiroc.ca/Documents/2018/54df3aa0-06d8-48fd-8e93-ce469be1c650_en.pdf should be rescinded and exposed to full CSA examination as a proposed Rule with Investor input as it puts undue constraints on the OEO that limit valuable investor services. IIROC should <u>not</u> be permitted to define 'advice" or "recommendation" without formal CSA approval.

Q 10. *At this time, the CSA is allowing redemption schedules on existing DSC holdings as of the effective date of the Proposed Amendments to run their course until their scheduled expiry, and fund organizations to continue charging redemption fees on those existing holdings that are redeemed prior to the expiry of the applicable redemption schedule. Should the CSA propose amendments to require existing DSC holdings as of the effective date of the Proposed Amendments to be converted to the front-end load option or other sales charge option? If so, are there any transitional issues for fund organizations and participating dealers with converting existing DSC holdings to another sales charge option? What would be an appropriate transition period?*

I do not feel that conversion to FEL or D series is appropriate. A conversion (switching) to F class (or equivalent) should take place on a no cost, tax-free basis no later than the effective date. As previously stated, I believe conversion should actually take place now given the known financial harm investors are enduring. The downside of a conversion to FEL is that the fund assets would, after conversion, carry a 1% trailer rate instead of 0.50 % unless offset by a reduced MER.

Q11 **Regulatory arbitrage**. *We understand that the elimination of the DSC option may give rise to the risk of regulatory arbitrage to similar non-securities financial products, such as segregated funds, where such purchase option and its associated dealer compensation are still available. Please provide your thoughts on controls and processes that registrants may consider using, and on specific measures or initiatives that the relevant regulators should undertake, to mitigate this risk.*

It is a very valid concern that dual-licensed salespersons will migrate unsophisticated clients, seniors and vulnerable investors into Annuities/Segregated funds or Index-linked GIC's/PPN's where even lighter touch regulation prevails. Example of DSC mis-selling: In a 2016 IIROC settlement agreement with Edward Jones a number of DSC mis- selling cases were evident. One of the representatives sold certain client mutual funds and incurred DSC fees to buy segregated fund contracts on new DSC schedules, then sold segregated fund contracts to purchase new mutual funds on DSC schedules, thereby incurring significant redemption fees and committing his elderly clients to new DSC schedules. The clients were born in 1920, 1926 and 1936. http://www.iiroc.ca/Documents/2016/384f2a79-b219-4f5f-8009-a49e0021db19_en.p

We urge the CSA and SRO compliance/enforcement to be prepared for this more sophisticated type of financial assault.

It should not be possible to undermine securities regulation simply by wrapping some features around a mutual fund and calling it a PPN or Seg fund. The mutual fund is still bound by laws regarding its availability by numerous rules including how it is sold (NI81-105) and how it is governed (NI81-107). An example would be that of a home builder building a home containing an electric switch. No matter what the design of the home, the switch must be approved by the Canadian Standards Association (CSA). The switch must continue to meet CSA standards; it cannot be altered. If this analogy holds, then if a mutual fund is prohibited from making upfront payments, then the wrapped product (insurance contract) that holds it cannot expect the fund to release cash to it. No doubt this concept will require some legal massaging.

I recommend that any redemption of a mutual fund to purchase a Seg fund / annuity or a securities- like banking product (Index-linked GIC) be supported by a compliance review or documented suitability analysis. There should be tighter limits and controls placed on dual-occupation and OBA sales approvals. In the case of say, Segregated Funds, the provincial Ministries of Finance should simultaneously impose equivalent conditions on Insurance products, the Segregated fund in particular. Cooperation between securities and insurance regulators should be tightened as to information sharing, enforcement and registration.

Q12. *Given that NI 81-105 aims to restrict compensation arrangements that can conflict with registrants' fundamental obligations to their investor clients, and given that the proposed Client Focused Reforms introduce the requirement for registrants to address conflicts of interests, including conflicts arising from third-party compensation, in the best interests of clients or avoid them, should the modernization of NI 81-105 entail a consolidation of its requirements into the registrant conduct obligations of NI 31-103?*

The two documents are intertwined so a consolidation into NI31-103 seems to make sense. If not consolidated and there is a conflict between the documents, NI31-103 should have precedence. **Question:** Will the provisions of this Consultation proceed if the CSA client –focussed proposals (http://osc.gov.on.ca/documents/en/Securities-Category3/rule_20180621_31-103_client-focused-reforms.pdf) are delayed or aborted?

Q 13. *NI 81-105 currently applies only to the distribution of prospectus qualified mutual funds. In our view, the conflicts arising from sales practices and compensation arrangements that are addressed by the provisions in NI 81-105 are not unique to the distribution of prospectus qualified mutual funds and also arise in the distribution of other investment products, either sold under a prospectus or a prospectus exemption. Are there other types of investment products that are not currently subject to NI 81-105, such as non-redeemable investment funds, certain labour-sponsored investment funds, structured notes and pooled funds that should also be subject to NI 81-105? If not, why should these investment products, their investment fund managers and the dealers that distribute them, remain outside the scope of NI81105?*

As stated multiple times in numerous consultations, the restricted compensation and sales practices should not be limited to mutual funds. If Investor protection is a key CSA goal, I can think of no logical reason that other products and services, including ETF’s, should remain outside the scope of NI81-105. The CSA, IIROC and MFDA reports on conflicted compensation identified dozens of compensation models that are diametrically opposed to acting in the client’s best interests.

Q 14. *We seek feedback on whether we should change the term "trailing commission" to a plain language term that investors would better understand and would better describe what a trailing commission is. If so, what are some suggested terms?*

I think a plain language term would be better. I suggest "distribution commission" or "service charge" but any terminology employed would require Investor testing. The basic literacy level of mutual fund investors assumed should be the same as that used to develop Fund Facts. As an aside, we recommend that Fund Facts break out the trailing commission from the management fee and present it a stand alone cost element. This would greatly improve fee transparency and client awareness.
Viz

Management fee excluding trailing commission	1.23%
Trailing commission	1.00 %
Trading expense ratio	0.12%
Total expenses	2.35%

We have seen many cases where clients were not advised of price breakpoints .In the case of mutual funds, there should be an explicit requirement in Fund Facts to disclose price breakpoints. With all the text on DSC eliminated, there should be plenty of space in Fund Facts to include breakpoint information.

ANNEX F REGULATORY IMPACT ANALYSIS OF THE PROPOSED REFORMS TO ADDRESS CONCERNS RELATED TO THE PAYMENT OF EMBEDDED COMMISSIONS "...*In this section, we provide an overview of the anticipated costs and benefits of the proposed package of reforms to address concerns related to the payment of mutual fund embedded commissions. ...*"

I am always sceptical of cost-benefit analyses that involve human behaviour. In this consultation I question the need for any analysis since the sales practices are some combination of illegal, improper, exploitive, harmful and immoral behaviour. As noted, I question even the need for a consultation, never mind a C-B analysis.

Fee structure arbitrage

There is plenty of bad news in IIROC's findings in its review of compensation related conflicts.
https://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=5365CB5BE384477F8FC08C2B9450424A&Language=en

IIROC says there was "a bias on the part of most dealers towards fee-based accounts over commission-based accounts." It added "Most dealers provide the highest possible grid payout to representatives for fee-based revenue." On top of that, IIROC says, "a significant number of dealers provide additional incentives to representatives in the form of performance bonuses linked to fee-based assets," leading to clients being moved to these accounts unnecessarily. IIROC said most firms argued that "fee-based accounts align registrant interests with client interests better than commission-based accounts." However, IIROC countered , "While this may be true in some cases, there are other cases such as 'buy and hold' where the client will be paying ongoing fees without receiving a commensurate level of ongoing service."

Such practices would disproportionately harm seniors and retirees. The CSA finally appears to be taking action to curb DSC mis-selling but it must also, along with the SRO's, simultaneously take pro-active measures to address reverse churning.

We believe reverse churning is likely to happen if DSC sold funds are banned. IIROC (and the MFDA) needs to have a specific rule and guidance on this important matter. See my blog *Are you a Reverse Churning Victim?* https://www.blogger.com/blogger.g?blogID=4766585986003571384#editor/target=post;postID=4699390911828126699;onPublishedMenu=allposts;onClosedMenu=allposts;postNum=2;src=postname

Co-operative marketing support et al [*Part* 5 of NI81-105]

I sincerely believe such payments from fund assets and non-monetary benefits can only lead to trouble and should be prohibited. Wealth managers and salespersons acting in the client's best interests should not receive payments or other benefits from product suppliers. Co-operative marketing ventures like "Free lunch" seminars have been shown to lead to a number of problems. A number of recent OSC enforcement actions demonstrate how pernicious such payments can be. See *Ontario Securities Commission places mutual fund sales practices under scrutiny again* https://www.osler.com/en/blogs/risk/may-2018/ontario-securities-commission-places-mutual-fund-sales-practices-under-scrutiny-again A ban would be a constructive step towards making the Canadian advice industry professional.

The influence of such activities on salesperson recommendations can only be negative. I strongly recommend that mutual funds be prohibited from providing cash for promotional marketing and Rep "education" and that such dealer/Rep influencing activities be banned regardless of cash source.

Referral Fees

I realize that referral fees are not part of this consultation but they are a closely related issue. In CSA CONSULTATION PAPER 81-408 the CSA stated "We acknowledge that the above types of payments may give rise to conflicts-of-interest that may continue to incent registrant behavior that does not favour investor interests." So why are referral fees not being prohibited? A quick look at the BNS referral disclosure document http://www.scotiabank.com/ca/common/pdf/scotiamcleod/Referral-Disclosures-82014612_eng_0211.pdf presents so many bear traps for the unsuspecting retail investor it is hard to imagine he/she would escape unscathed. People are looking for trusted investment advice on their life savings and it is the duty of regulators to provide a safe environment for doing so. If there is one referral fee that should be banned, it would be the referral fee that supports leveraging. Leveraging DSC funds has been a particularly nasty and harmful practice. Fee structures are like Whack-A- Mole, they must be dealt with holistically.

Enforcement and Investor Protection

Not since the 2004 mutual fund market timing scandals have those responsible for securities enforcement targeted a systemic issue in the mutual fund industry despite such issues being flagged by investor advocates. CSA members and the SRO's. choose to go after the small fish. When confronted with a systemic issue like embedded commissions or lack of effective redress they take a pass. This cycle of aggressive inaction has to stop.

The CSA has recently prosecuted numerous dealers that had been double billing clients for years (up to a decade) or not advising clients of lower cost series availability. I believe the CSA should make a determined effort to routinely enforce rules with meaningful sanctions that expressly deal with these matters.

Rules are meaningless without enforcement so even if these proposed rules are implemented, I am concerned about the capacity, determination and resources of CSA members and SRO's to enforce them. We know that while NI81-105 came into force in 1998 the first enforcement action did not occur until 2017! For at least a decade investor advocates pleaded with IIROC to prohibit discount brokers from selling mutual fund series A to their clients. Nothing was ever done, costing Canadian investors an estimated $190M per annum in unnecessary fees*. No guidance or Investor ALERT to protect investors was issued by any regulator during this entire period.

* The de-compounding impact of this undue 1% charge can dramatically reduce portfolio returns over time i.e. retirement savings See **De-compounding – the tyranny of fees**
http://www.canadianfundwatch.com/2017/11/decompounding-tyranny-of-fees.html

Multiple double billing enforcement cases show just how weak dealer controls and systems were. The recent "no contest" settlement with RMFI carried a token $1.1 million administrative penalty. RBC makes $1B a month in profit. In that case, RMFI openly broke NI81-105 rules. Can the CSA honestly say this acts as a general deterrent? Mis-selling pays in Canada- the wrist slap fines are a small cost of doing business. Unless things dramatically change, it doesn't really matter what rules are in place. I encourage Compliance and Enforcement to be actively engaged with this Consultation so they are fully up to speed on Day 1.

Bottom Line

The DSC option exists because it pays a bigger upfront commission to the dealer and salesperson than other sales options, and a lesser continuing commission for service to the client. This is of no benefit whatsoever to the retail investor. In fact, banning the DSC will eliminate the DSC cost recovery provision built into the management fee and should therefore make mutual funds cheaper for millions of individual Canadians and families.

Implementation of this proposed rule means increasing use of the front-end load sales option, individual transaction fees or direct-pay arrangements. These methods of payment are much more transparent and visible to the fund Investor.

The discount brokers selling A series mutual funds were not dealing fairly, honestly and in good faith with clients. They did not even warn clients that they would not receive any advice or special services for the trailing commission. The Fund Facts disclosure documents that were delivered to clients of the A series funds actually stated that advice would be provided. Shame on IIROC for letting nearly a billion dollars of investor savings be wasted over the last decade.

I support the proposed rule changes subject to the commentary provided herein. There should be no exceptions, carve outs or exemptions.

I would be delighted to address any questions you may have or to meet with you to discuss these and related issues in greater detail.

Permission is granted for public posting.

Ken Kivenko
Retail Investor and Advocate

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Investment Funds in Canada and Consumer Protection (1998) OSC G. Stromberg
"…The second situation relates to the expiration of the period during which redemptions of mutual fund securities would give rise to a deferred sales commission. Industry participants tell me that as in the first situation, some sales representatives are advising their clients (or using powers of attorney that they have obtained from their clients) to redeem these mutual fund securities and to reinvest the proceeds either in the same fund on a zero front-end sales commission basis or in another fund on a deferred sales commission basis. The consequences of this action are the same as those described above in respect of the first situation…."
http://www.sipa.ca/library/SIPAdocs/Stromberg_InvFunds-Oct1998.pdf

The Genesis of DSC Mutual Funds | WhereDoesAllMyMoneyGo.com
http://wheredoesallmymoneygo.com/the-genesis-of-dsc-mutual-funds/ Shows how the trailer was born.

Can you believe this? A Money market fund available on a DSC basis
There are some money market funds sold on a DSC basis even though these funds are intended as a short term parking spot for cash (e.g. the Fidelity Canadian Money market fund https://www.fidelity.ca/cs/Satellite/doc/FF_STAF_A_en.pdf) How can this be ethically sold by a professional advisor? Why is it even on the market?

Talk versus action on embedded commissions ban | Advisor.ca
http://www.advisor.ca/news/industry-news/talk-versus-action-on-embedded-commissions-ban-223245

CNW | MFDA **Hearing Panel approves settlement agreement with Sun Life Financial Investment Services (Canada) Inc.**
Sun Life admitted that between June 2014 and June 2016, it failed to supervise the suitability of the sale of mutual funds with deferred sales charges (DSC), to ensure they were suitable for clients. For example, the firm's policies and procedures did not include consideration of the client's age and time horizon as factors in reviewing trades involving DSC funds.
https://www.newswire.ca/news-releases/mfda-hearing-panel-approves-settlement-agreement-with-sun-life-financial-investment-services-canada-inc-665725303.html

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CNW | **Limit Series A Sales to Channels that Permit Advice:** IFIC
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See pages 20/21 re DSC information-hold periods
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CNW | **Class action filed on behalf of investors in CIBC mutual funds through online/discount brokers**
Siskinds LLP and Bates Barristers P.C. have filed a proposed class action against the Canadian Imperial Bank of Commerce and CIBC Trust Corporation regarding trailing commissions paid to online/discount brokers on CIBC mutual funds. https://www.newswire.ca/news-releases/class-action-filed-on-behalf-of-investors-in-cibc-mutual-funds-through-onlinediscount-brokers-693692911.html. There should have been no need for this.

MUTUAL FUND REVENUE SHARING: A CASE OF PAY TO PLAY
https://www.researchgate.net/

Making a move on fees | Investment Executive
New lawsuit and SRO proposals could affect CSA's decision
https://www.investmentexecutive.com/newspaper_/news-newspaper/making-a-move-on-fees/

Regulators point out anomalies in fund sales and accounting practices | Steven G. Kelman | Fund Investing | Morningstar
The review also looked closely at certain aspects of sales practices including cooperative marketing practices, mutual fund sales conferences and fund manager participation in the sponsoring of dealer events. What investment fund managers can and cannot do is spelled out in *National Instrument 81-105 Mutual Fund Sales Practices*, which has been around since 1998. Its purpose was to discourage sales practices and compensation arrangements that raised the question as to whether the clients' interests rather than those of the sellers were being served (to quote the commentary published at the time which I prepared for IFIC).Fund managers can pay a portion of the costs of an investor conference or seminar that a dealer puts on for investors. However, the Staff Notice says there was a 25% incidence rate where "cooperative marketing practices did not meet the primary purpose of promoting or providing educational information concerning a mutual fund, a mutual fund family or mutual funds generally in order to be eligible for support. "Staff also had concerns regarding mutual fund sponsored conferences. Fund managers are prohibited from paying travel and accommodations expenses of sales representatives, yet there was a 50% incidence rate of this occurring. Similarly, non-monetary benefits such as meals and entertainment were deemed excessive.
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