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Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

**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

The Small Investor Protection Association (SIPA) is a volunteer member organization committed to fair practice in the investment industry. SIPA was incorporated (Ontario corporation number 1327366) as a national non-profit organization at the end of January, 1999, with headquarters in Markham, Ontario.

SIPA have not recently been commenters to CSA Consultation requests for various reasons. However, Ontario's Minister of Finance Vic Fedeli's statement stating that his government does not support the Canadian Securities Administrators' (CSA) proposals published on June 21, 2018 has prompted us to submit a Comment letter. Refreshingly, the CSA is siding with average Canadians when the little guy needs those in power to demand accountability from the wealth management industry.

**The unwarranted receipt of trailer commissions by Discount brokers**

The issue of discount brokers receiving trailer commissions for services from A series Mutual funds is just incredible. It should stop immediately and all victims made whole after years of being charged for undelivered services. The fund companies should be held to account for the transfer of wealth to Discount Brokers (Bay Street) from unitholders (Main Street).

**The agony of the DSC sold mutual Fund**

For the last two decades, SIPA has heard from thousands of victims of financial industry wrongdoing and listened to their tragic stories of how this has negatively impacted their lives. From our many years of experience, there is no doubt that DSC sold mutual funds have not been serving Canadians well.

Unlike the UK and Australia, Canada has retained embedded commissions. The CSA is only trying to prohibit the DSC sold mutual fund option with its outsized upfront commission locking investors in for 7 years. A band-aid for investor protection.

Fund salespersons dependent on these quick and larger commissions that DSC's provide are put into a terrible conflict-of-interest with their clients. Seniors as we know can have rapidly changing needs due to changes in their health and care needs. Yet we find seniors are particularly vulnerable to being taken advantage of in this manner since they are often the ones with savings. The redemption penalties to access their own hard-earned savings when needed are heart- breaking.

Instead of locking any Canadian, young or old, into investments with DSC's maybe we need to be encouraging more of them to pay down debt with any extra cash, or to put together a rainy- day fund. Many households do not have enough liquid savings to cover any emergency or unexpected expenses like a new furnace, roof, car repairs, or even if an appliance breaks down. To have their savings locked away is both unwise and unfair. The DSC sold mutual fund is a toxic product that does not serve society in any positive way.

Prof. Douglas Cumming's empirical research report on embedded commissions https://www.osc.gov.on.ca/documents/en/Securities-Category5/rp_20151022_81-407_dissection-mutual-fund-fees.pdf demonstrates that investments under the DSC option have the least sensitivity to past performance out of all purchase options but nonetheless $241 billion dollars of assets under management were held in DSC funds (back-end and low load funds) at the end of 2015.This suggests massive mis-selling locking clients into a fund for 7 years for no good reason instead of recommending no-load funds , the 0% FEL option, Index funds or low cost ETF's.

The MFDA's 2017 Client Research Report http://mfda.ca/news-release/client-research-report/ indicates it has identified seniors as a particular concern with respect to DSC sold mutual funds and that dealing representatives may be using upfront DSC commissions to finance the cost of their operations to mass market clients. DSCs appear to target the most vulnerable, least financially sophisticated clients adding to their financial stress.

A recent survey by Capital One Canada and Credit Canada Debt Solutions https://www.newswire.ca/news-releases/personal-finance-a-root-cause-of-stress-among-canadians-new-study-by-capital-one-and-credit-canada-698519162.html adds to the growing evidence that financial stress is increasingly taking its toll on Canadians .In the online #MoneyMindfulness poll of 1,534 randomly selected Canadian adults, 44% expressed a belief that their financial situation has had a negative impact on their mental health. The perceived impact is so significant that 30% cited financial stress as a larger worry than their overall health. The reduced liquidity of DSC funds does NOT relieve financial stress, it adds to it.

The DSC is being used by the industry to finance new fund salespersons. It is NOT about investor choice. Real choice for investors would be between retail advisors who are accountable to a fiduciary duty and accept no conflict-based remuneration and the current situation of working with a salesman! The DSC option is advisor choice and industry choice. The DSC is an aggressive remuneration option designed to get sales reps quickly established and the more they are willing to take advantage, the more important the DSC becomes. A new salesperson is not going to come into the business unless they can earn immediate money. Rather than through a DSC, it would be better if a dealer paid a salary. If a dealer takes the risk of paying some base salary, logic dictates they would be far more engaged in the quality of the advisor they engage. This would be a better route for investors and the industry.

The DSC poses several problems to the investing public. The DSC significantly increases overall investment management fees. Paying a 5% upfront fee to a sales person plus 0.5% per year leaves mutual fund managers with a large expense to recover prior to making a profit for themselves, this inevitably translates into higher fees borne by the investor. DSCs give the incentive for a salesperson to work hard to get their new clients into an investment but leaves little incentive to do any work thereafter. Once they've committed to the investment the Rep has received the lion's share of their compensation and arguably has little direct motivation to continue fostering his or her relationship with the client.

The DSC locks small unsophisticated investors into a mutual fund for up to 7 years. If the investments do not perform as anticipated, or a client has a legitimate need for cash, redeeming out of these funds is a costly move. Small investors have access to a number of other economical and attractive choices that would not be impacted if the DSC option were banned.

Canada has a unique reliance on DSCs in its mutual fund market with 20% of mutual fund assets in Canada whereas these options are less than 1% of mutual fund assets in the U.S. and Europe. SIPA strongly recommends that DSC option funds, a toxic form of embedded commission (paid at the point of sale), that needs to be prohibited. They are rife with conflicts-of-interest, target the most vulnerable investors and there is concrete evidence of mis-selling, in addition to the mutual funds themselves being suboptimal.

**A fiduciary duty is the appropriate standard for personalized financial advice**

The financial industry has generated an image of advice and service when in reality it is based upon selling product. We have interviewed many victims and found that most of them knew very little about investing. They simply trusted their Financial Advisor to look after their savings. They truly believed that their advisor would and many believed this person had a fiduciary duty to do so. Sadly, this is not the case here in Canada. SIPA's report “Advisor Title Trickery” indicated 121,932 total registrants in Canada in the investment industry yet only 3% of those are registered in a category where a true fiduciary professional responsibility is legally required. The current suitability regime, loaded with conflict-of-interest, can hardly be called “advice”. But now it is being used as a basis to provide what is purported to be ever more fulsome financial advice and its deficiencies are glaringly apparent. Additionally, with an aging client population, fewer defined pensions being offered by employers and more defined contribution plans being part of the future, there is an increasing need for Canadians to have access to impartial professional financial advice that can be trusted is in their best interests.

**Transition Times**

As regards the discount brokers collecting trailers for advice and unspecified services, SIPA recommend that this be considered a fundamental breach of the requirement to deal fairly, honestly and in good faith with clients. Accordingly, the CSA should issue a cease trade order and commence enforcement proceedings against discounters and associated mutual fund companies participating in the financial assault.

As to the DSC issue, SIPA agrees that existing DSC funds should be permitted to play out their remaining DSC redemption schedules. We recommend that (a) new Prospectus applications involving DSC funds be delayed until a decision is made on the DSC ; (b) dealers be advised that should the proposals be approved , the effective date will be the date of the consultation and (c) any ongoing DSC sales made will be subject to enhanced scrutiny. In addition, SIPA recommend that the CSA Issue an Investor Bulletin highlighting the CSA’s concerns with the DSC option .The Bulletin should make maximum use of every communication channel available to the CSA so as to minimize continuing investor harm.

One small step forward for small investors would be the elimination of the Deferred Sales Charge option. A larger much more needed step, is for advice givers to be held to the highest standard when handling Canadians hard-earned savings and their trust.

Please feel free to contact me if there are any questions.

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Sincerely,
Stan I. Buell President