CSA ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 81-332

Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions

December 19, 2019

Introduction

On September 13, 2018, the Canadian Securities Administrators (CSA or we) published for comment proposed amendments to National Instrument 81-105 *Mutual Fund Sales Practices* that would prohibit

- the payment of upfront sales commissions by fund organizations to dealers, and in so doing, discontinue sales charge options that involve such payments, such as all forms of the deferred sales charge option, including low-load options (collectively, the **DSC option**), and

- trailing commission payments by fund organizations to dealers who do not make a suitability determination, such as order-execution-only (**OEO**) dealers

(collectively, the **2018 Consultation**).

The purpose of this notice is to provide an update on next steps.

Background

On January 10, 2017, we published for comment CSA Consultation Paper 81-408 *Consultation on the Option of Discontinuing Embedded Commissions* (the **Consultation Paper**), in which we identified and discussed key investor protection and market efficiency issues arising from mutual fund embedded commissions. The Consultation Paper sought specific feedback, including evidence-based and data-driven analysis and perspectives, on the option of discontinuing embedded commissions as a regulatory response to the identified issues and on the potential impacts to both market participants and investors of such a change, to enable the CSA to make an informed policy decision on whether to pursue this option or consider alternative policy changes.

Further to our evaluation of all the feedback received throughout the consultation process, including written submissions and in-person consultations, the CSA decided on a policy response which we announced in CSA Staff Notice 81-330 *Status report on Consultation on Embedded Commissions and Next Steps* (**CSN 81-330**) published on June 21, 2018. The CSA proposed the following policy changes:

1. implement enhanced conflict of interest mitigation rules and guidance for dealers and representatives requiring that all existing and reasonably foreseeable conflicts of interest, including conflicts arising from the payment of embedded commissions, be addressed in the best interests of clients or avoided;

2. prohibit all forms of the DSC option and their associated upfront commissions in respect of the purchase of securities of a prospectus qualified mutual fund;

3. prohibit the payment of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who do not make a suitability determination in connection with the distribution of securities of a prospectus qualified mutual fund.

In addition to announcing the CSA's policy decision and providing a summary of the consultation process and the feedback received, CSN 81-330 provided an overview of the regulatory concerns that our proposed policy changes aim to address, and also discussed why we are not proposing to ban all forms of embedded commissions.

The CSA published the 2018 Consultation for a 90-day comment period and requested feedback on transitional issues including a proposed transition period of 365 days from the date of final publication of the amendments.

The CSA considered comment letters and feedback from stakeholders.

Next Steps

The securities regulatory authorities of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Nunavut, Northwest Territories and Yukon (the **Participating Jurisdictions**) will publish for adoption final amendments in early 2020 to ban the DSC option.

The Ontario Securities Commission will not be adopting final amendments to ban the DSC option.

All members of the CSA will publish for adoption final amendments later in 2020 to ban payments of trailing commissions to dealers who do not make a suitability determination.

Transition

With respect to the ban of the DSC option, the Participating Jurisdictions anticipate that

- there will be a transition period of at least two years,
- on the effective date of the DSC ban, Participating Jurisdictions will not permit new sales using the DSC option in the Participating Jurisdictions, and

- DSC redemption schedules for sales made prior to the effective date of the DSC ban will be allowed to run their course in the Participating Jurisdictions.

The Participating Jurisdictions will provide more information when the final amendments are published, including any transitional provisions that may be required to allow the continued use of the DSC option after the Client Focused Reforms enhanced conflicts of interest requirements come into effect.

With respect to the ban of OEO trailing commission payments, the CSA anticipate that there will be

- a transition period of at least two years, and

- additional adjustments to respond to stakeholder comments.

Questions

Please refer your questions to any of the following:

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