

## New Compensation Restrictions for a New Decade – CSA Bans with Twists in Ontario

December 20, 2019

Just in time for the holidays, the Canadian Securities Administrators yesterday released [CSA Staff Notice 81-332 Next Steps on Proposals to Prohibit Certain Investment Fund Embedded Commissions](#). The CSA in all provinces and territories, other than the OSC, have decided to move forward with final rule changes to ban payments by fund managers to dealers of upfront sales commissions (that is, those payments associated with deferred sales charge purchase options). The CSA in all provinces and territories, inclusive of the OSC, have also decided to move forward with final rule changes to ban trailing commission payments to discount brokers. We can expect to see these policy decisions reflected in final rule amendments to National Instrument 81-105 Mutual Fund Sales Practices published during the first quarter 2020.

This publication comes a little over a year after the end of the comment period on the proposed amendments to NI 81-105 that were published in September 2018. BLG's Investment Management Bulletin on this [publication is available here](#) and our [comment letter is available here](#).

The CSA indicate that there will be a transition period of at least two years for the DSC ban and after the effective date, no new sales using the DSC purchase options will be permitted in Canada, other than in Ontario (but see below). The redemption schedules applicable to investors who acquired securities before the DSC ban will be permitted to run their course. Similarly, a two-year transition period will apply for the ban on trailing commissions.

The CSA signal that they also plan to explain how they view the application of the upcoming enhanced conflict of interest rules that are part of the Client Focused Reforms (amendments to National Instrument 31-103 that will be effective December 31, 2020) to any continued use of the DSC purchase option. It will be important to consider the CSA's views and respond, as necessary, particularly if the CSA are attempting to do indirectly, what they have not done directly.

While the OSC is not implementing a total ban on DSC, they are, however, considering restrictions on the use of DSC to (in their words) "mitigate negative investor outcomes". [OSC Staff Notice 81-730 Consideration of Alternative Approaches to Address Concerns](#)

[Related to Deferred Sales Charges](#)" was released by the OSC simultaneously with the CSA Staff Notice.

Options being considered by OSC staff include:

- Ban on DSC sales to older investors
- Regulatory limits on the terms for redemption fees
- Ban on the use of borrowed funds to finance DSC purchases
- Regulatory limits on account sizes
- Requiring firms to give investors "hardship exceptions from redemption penalties".

The OSC provided no timing of any future publication to implement these restrictions **(which will need to be in draft open for comments)**.

The regulatory conversation about embedded compensation in the fund industry has been a long one (since 2012) and no matter what position one takes, it will be refreshing to have it come to a close (pending any OSC developments), particularly heading into a new decade. We will continue to watch for future publications and keep you informed.

Please contact your BLG lawyer or the authors of this Bulletin if you have any questions about the CSA's pronouncements on sales compensation, including those of the OSC on regulatory options regarding DSC, or on the Client Focused Reforms.

By

[Rebecca A. Cowdery](#), [Kathryn M. Fuller](#), [John Hall](#), [Lynn McGrade](#), [Donna Spagnolo](#), [Prema K. R. Thiele](#)

Expertise

[Investment Management](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.