June 8, 2017

CSA PAPER 81-408 – CONSULTATION ON THE OPTION OF DISCONTINUING EMBEDDED COMMISSIONS

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Thank you for providing me with the opportunity to offer my thoughts on Consultation Paper 81-408. This is quite possibly the most important piece of regulatory reform that the Canadian Financial Services industry has ever faced. It is obviously important that stakeholders work hard to 'get it right' and to consider the range of possible outcomes when weighing alternatives.

I'd like to begin my comments with a pre-emptive observation about the terminology that is used in this paper and in other papers that are similar in tone and substance. This is in regard to the loose application of the term "unintended consequences" – at least in regard to the entities that offer their comments. Specifically, I believe more explicit clarity ought to be provided regarding the true intent of possible consequences. As such, I'd recommend simply using the less-judgmental term 'consequences'. In short, what matters about public policy changes are the consequences of actions taken – whether they were intended or not. For example, there might be a broad agreement that certain reforms might reasonably result in a reduction in the number of advisors offering financial advice. Some commentators might think this is a potentially positive likely outcome, while some stakeholders might see it as being a potentially negative outcome. What matters here is the outcome itself, not the terminology of how that outcome is to be positioned (whether the outcome is intended or not is largely and inherently a value-judgement). Stated differently, the same facts / consequences could be characterized differently depending on who is making the submission. Some might say that an outcome is positive (i.e. an "intended outcome"), while others might say (for example, decline in the number of advisors) is likely to be negative (i.e. an "unintended outcome"). My simple point is that the word "unintended" can be manipulated. It is often used as a synonym for words like "unfortunate" or "unpopular" when in actual fact, unintended consequences are simply those that people might not reasonably foresee.

By way of clarification, I believe the potential reduction in the number of advisors is both likely and positive. To me, it is neither here nor there whether that potential outcome was intended or not. It simply is. Furthermore, I believe it is an outcome that most reasonable people who understand the situation would reasonably foresee. As such, it would be disingenuous, in my opinion, to portray the consequence as "unintended". The term "unintended" implies that you didn't see the consequence coming – irrespective of whether that consequence is positive or negative. That's simply not the way many commentators use the term.

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Please note that while I work as a portfolio manager at an IIROC member firm, I am nonetheless functioning as an independent contractor and the views expressed in this document are strictly my own. None of the comments that follow should be misconstrued as representing my place of employment. I will allow those people to speak for themselves just as I am speaking for myself.

For greater detail, I ask that the people reading this submission refer to my book <u>The Professional Financial Advisor IV</u> for more detail – especially chapters 4, 5 and 10 through 15. I provided copies of my book to both Dennis Yanchus and Chantal Mainville of the OSC in late 2016.

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Rather than go into an inordinate amount of detail at the outset, I feel it would be best for me to answer the specific questions that are posed throughout the body of the consultation paper and to offer a summary and final overview once I have done so.

Therefore, my answers to your specific questions are as follows:

1. Yes. I feel the issues are essentially self-evident.
2. While not noted expressly in the introductory section, a key problem is the competitiveness of other products and investment alternatives. Stated differently, the opening section seems to deal with how embedded compensation can skew recommendations relative to competing products that pay lower commissions. However, there are a number of competing options (ETFs come to mind) which are often superior, cheaper, more transparent (regarding underlying holdings) and more tax effective (due to generally lower turnover) which are not expressly referenced at all. To my mind, the bigger problem is one of recommending the best products available; not merely the best products from among those that might pay an embedded

commission. My experience is that for many (mostly MFDA) advisors, the surest way to find your way off the product shelf is to have a product that does not offer embedded commissions. If one takes the view that mutual funds, in particular, are sold; not bought, then it should logically follow that registrants will likely prefer those products that are 'easy to sell'. In short, the 'other harms' that you ask about include foregone opportunities to substitute superior products into clients' portfolios in lieu of those that pay embedded commissions.

3. The short answer is 'no'. The longer answer is that concepts like 'access to advice' are red herrings. Changing how one pays for advice has zero economic impact on how much one pays.
4. The short answer is 'yes'. Normally, answering 'yes' would involve a non-response to corollaries a and b, however, I feel I need to respond at any rate. I have nothing to add re: a, but I do believe that, further to b, there is a real risk of regulatory arbitrage if embedded compensation is discontinued for some products and not others. Ironically, you have asked for empirically evidence in this paper. However, the nature of this question means that people will be required to offer their best guesses in light of the obvious lack of clear evidence regarding potential outcomes. I have heard a considerable amount of anecdotal evidence (some of which may have come to light after this discussion paper went to press) that many dual licensed registrants (both insurance and funds) were moving their practices toward segregated funds precisely because they did not want to be held to the standards set out in CRM II. If that trend is even modestly apparent due to CRM II, it would likely be highly apparent if embedded compensation was discontinued for mutual funds, but not segregated funds.
5. The simple answer is 'no'. This sort of policy would work best in a world where there is a level playing field and all participants (including discount brokerages) charged separately for the advice they give…. or are prohibited from charging in those instances where they expressly offer no advice whatsoever.
6. In my view, all manner of embedded compensation ought to be discontinued as per my previous response. There should be no exceptions. Embedded compensation should be discontinued across the board.
7. Yes, I agree. It simply maximizes transparency, minimizes bias and goes much further in exploding the (still prevalent after CRM II) myth that financial advice is "free".
8. Other compensations need not be under consideration for discontinuation at this time. As has been noted by the Brondesbury and Cumming Reports, embedded compensation compromises recommendations and creates an environment that can fairly be described as having advisor bias. Although I have personally not seen any research regarding advisor bias being caused (or even exacerbated) by the types of compensation noted in the original question, I do not believe it would be particularly material even if it did exist. Furthermore, some elements (small token gifts) will be difficult to monitor and might be open to interpretation if enforcement was attempted). If a limit is $100 and a company gives an advisor a golf shirt that cost $50 to manufacture, but that retails for $120, was the limit exceeded? Better to stick with the major concerns rather than getting involved in minutiae. The possible exception here is underwriting commissions. At present, some firms allow advisors to double dip – either by buying new issues directly into fee-based accounts or by buying them in commission-based accounts and then transferring them into fee-based alternatives. To my mind, the surest way to end this abusive practice – which is clearly contrary to the spirit of the regulations even if it is not always clearly contrary to the letter – would be to remove all embedded compensation from new issues.

9. In my opinion and further to the answers given to question #8 above, the answer is 'no'.
10. I have very limited experience regarding the questions asked in this section and, as such, I will refrain from commenting.
11. The idea of simplified payment remittances lies at the heart of making embedded compensation disappear, in my opinion. Too often, stakeholders come forward with the ridiculous positon that paying separately would cause clients to leave their advisors and create an "advice gap". This is total rubbish. Assuming all else to be equal, the amount being paid would be unchanged whether the payment is made via the payment of trailing commissions, the payment of direct and separately charged fees or the liquidation of pre-existing holdings to pay the fees. The quantum of payment does not change simply because the method of collection and remittance changes. The explanation that I like to use is that one dollar does not cost more than four quarters. The extent to which people refuse to pay for separate, transparent and duly itemized fees seems to be dependent on the extent to which they understand how and how much people pre-existing payment methods cost. Correlation is not causation. Certain groups would have people believe that charging separately makes advice less attainable. In fact, it simply makes the cost of advice more transparent. People refuses to pay not because they cannot do so (indeed, the cost of advice is unchanged), but because they are now being shown (in many instances for the first time) in a clear, unambiguous way just how much financial advice costs. The industry says it favours disclosure and transparency, but that is not strictly true. My experience is that certain stakeholders make disclosures only to the extent that they meet their (modest) regulatory obligations. In so doing, they are obviously not gaining an informed consent from their clients, because those same clients often refuse to pay when they are made to understand that financial advice is not "free". Facilitating payment (for instance, by redeeming units of mutual funds) would mean that those people who do not wish to pay separately could be accommodated seamlessly.
12. Categorically yes.
13. There needs to be a CRM III sort of disclosure that begins either prior to or concurrent with the ending of embedded compensation whereby consumers are told explicitly (in yearend dollar terms) how much their investment products cost. $100,000 in a front end equity fund with a 2.4% MER currently notes that compensation to the advisor and firm is (typically) $1,000 annually. It does NOT note that there is an additional $1,400 product cost being borne by the investor. In short, the quantum of product cost and the importance of product cost are not salient considerations for most retail investors. They ought to be. Making the information transparent is akin to making it salient. The entire challenge is to help investors make informed decisions. As such, the principle of informed consent needs to be championed and all means available to apply the concept should be utilized.
14. The answer to the conflicts of interest question depend on how the transition takes place. The devil is in the details, as they say. For instance, if an advisor could make more money using one format over another (if there is a period when both are at least somewhat available), one ought to expect the system that pays the advisor more to be the system that is recommended – all else being equal. Assuming all inherent conflicts can be eliminated (or at least honourably controlled for), I would not anticipate any problems.

15. In my opinion, the answers are/ outcomes will be as follows:
    - The will indeed be a greater alignment of services, products and overall advice.
    - The change will likely provide a moderate boost to the adoption of online services. The ramifications are likely too difficult to predict given the lack of statistically significant evidence on the subject. However, recent studies (Dalbar QAIB and the recent report from Morningstar Inc. of Chicago have found that mutual fund performance experienced by average Canadian fund investors is often worse than that of the funds they hold). As such, online and "robo" offerings may well gain increased acceptance as people come to understand the importance of managing both product and advisory costs and investor behavior as primary determinants of investment outcomes.
    - Discretionary is likely to increase as well. As a portfolio manager, I can tell you that my decision to offer discretionary series was driven by a different consideration – the desire to be held to a fiduciary standard. I made the decision to offer fee-based advice more than 15 years ago. Offering discretion is a logical extension of that earlier decision, which was nonetheless motivated by the principles set out in your paper: transparency, lower product cost and the breaking of the link between products recommended based primarily on preferred advisory business models.
    - Discount brokers are also likely to grow as a result of this change, but my suspicion is that the difference here will be relatively modest. The only real reason why people might switch to a discount broker as a result of the changes in 81-408 being enacted is that it might be cheaper to buy mutual funds by advoiding otherwise embedded trailing commissions. Anyone who is inclined to use a discount broker, but not mutual funds would likely be unaffected.
    - The cost of advice will be more granular as a result of unbundling. Specifically, small investors will likely end up paying moderately more for advice (but will likely be able to save a greater amount in lower product costs). Larger accounts (for instance, those over somewhere between $500,000 and $1,000,000) will likely pay the same or less for qualified advice. I would not expect a change in compensation methodology to lead to a material change in the services being offered. People generally do what they like and / or are comfortable doing – irrespective of how they are paid to do it.
16. In general, I would not expect broker/ dealers to offer different payments based on the segmentation of clients (for instance based on age, income, gender, profession, etc.). The primary means of segmentation will likely continue to be investable household assets, with a sliding scale being offered to offer competitive pricing for more desirable affluent households.
17. This proposal will absolutely, positively NOT result in an "advice gap". Changing how one pays does absolutely nothing to change how much one pays (*ceteris paribus*). A dollar does not cost more than four quarters. In particular:
    - Smaller investors are the ones least likely to pay – but only because they still do not (by and large –even after the reporting being done in CRM II) understand how and how much their advisor (and advisory firm) are being paid. Those who "refuse" to pay are largely oblivious to the **fact** that they have been paying for advice (often at similar or identical dollar amounts) all along.
    - I agree with the definition, but do not believe it will be manifested in the way that those who have expressed a concern about it would have people believe.

- There should be absolutely no distinction between face to face advice and 'robo' advice. This is especially true since there is no evidence (that I have seen, at any rate) that demonstrates the superiority of one format over another. Presumably, the distinction would be made on the premise that one kind (humans would always have the public believe they are better than pre-programmed algorithmic robots). Increasingly and in virtually all walks of life, artificial intelligence is disintermediating and disrupting pre-established business models. The onus is on those who claim the disruption is harmful to demonstrate that claim. To date, I have seen no such evidence.
- The things that would be most affected are mutual funds offered through discount brokerages and mutual funds offered to low-end (under $100,000 in household assets) families. Discount brokerages will be more compelling for DIY mutual fund investors. Many of the advisors serving small accounts insist that they add value through constructive behavior modification (i.e. encouraging higher savings rates). While possibly true, it might be equally true that 'robo' advisors are even more valuable (i.e. encourage the exact same behavior to the same extent, but at a lower cost). Again, I believe it is too early to say one way of another, but to suggest that the human approach is self-evidently superior is silly. Humans are the 'devil we know'. Presently, we simply do not know how effect 'robo' advisors might be in helping people to deal with their heuristic shortcomings. Time will tell.
- I do not believe the interplay between this initiatives or others will make for a material change (either better or worse) in the advice gap because I simply do not believe that there will be an advice gap.
- There is no need to mitigate things that do not exist. What are we doing to protect ourselves from a Martian attack?
- The short answer is 'no'. If anything, the expansion of online advice will serve to further democratize access to advice because the cost of advice with product implementation through 'robo' advisors will be the cheapest delivery mechanism available. Remember this: price is what you pay; value is what you get. In order to offer even comparable value, humans need to offer better advice, because the cost of 'robo' advice is lower than the cost of human advice. To my mind, 'robo' advisors represent an exciting and positive alternative for households with less than $100,000 in investable assets.
- I do not believe an advice gap will develop, but I fail to see how the concentration of advice offered by a particular channel (for instance, banks) would have an impact if it did develop.

18. Directionally, the industry would continue to transition toward unbundled formats at any rate. The issue here, however, is one of magnitude, not direction. Moving from 10% to 20% unbundled or from 20% to 25% is all fine and well, but if the pre-eminent problem is one of advisor bias, then that directional movement to (say) 25% unbundled would still leave 75% of the advisor population subject to bias-laden advice as a result of the harmful effects of embedded compensation. This matter is too important to leave to self-selection. Do police forces simply "encourage" people to refrain from drinking and driving without providing sanctions for those who fail to comply? Moral suasion is not nearly a powerful enough lever to cause such a necessary and fundamental shift to take place. Stronger measures are clearly in order.
19. Accepting that the depiction is necessarily general in nature, I believe the depiction set out in Figure 8 are reasonable. I would expect the industry to continue to evolve and migrate toward

higher end services and fees structures with algorithmic alternatives taking up the slack for the low end advisors and the clients they serve.

20. The only obstacles that exist are those that are implicitly imposed by dealers themselves. For instance, many vertically-integrated MFDA firms have been slow to offer true fee-based platforms. If they did, advisors might use them. But if advisors used them (i.e. substituted high-cost products for low-cost products in favour of their clients), it would hurt their employers. Employers call high-cost products “high-margin” products. To the extent that employers can delay the adoption of technologies and trading platforms that might be in their clients’ best interests, they effectively maintain the status quo. Since most advisors at MFDA firms are more loyal to their employers (who defend their mutually-beneficial compensation models), only a modest number of would –be early adopters press for change. These people are quickly and easily marginalized as “troublemakers” when the prospect of real change is put on the agenda.
21. For purposes of this discussion:
    - I absolutely believe that industry consolidation will continue – and likely accelerate.
    - Consolidation is likely a positive development since it will leave only the largest, most well-capitalized firms standing. This, in turn, should provide greater stability and possibly even more compelling economies of scale for those people who would use these services (i.e. ordinary investors).
22. The challenges are likely to be as follows:
    - Independent dealers – operational and compliance-based in nature
    - Independent fund manufacturers – nothing but pain. They will lose market share and will have lower margins on the assets they retain
    - Integrated financial service providers – will likely fall somewhere between the two groups above depending primarily on whether they are more like the first group or the second
    - Mutual fund dealers – see Independent Fund Manufacturers
    - IIROC dealers – largely impervious. These firms have already gone through the necessary changes. They will sit back and watch the disruption that is about to hit the low (and perhaps even middle) segments of the market.
    - Online/discount brokers – will lose (most of) the cash cow of mutual fund trailing commissions, but otherwise be unaffected.

    - Regulatory arbitrage is likely to occur in the first few years. The extent to which it occurs depends primarily on relative timing. If there’s a sense that there will be a long (say - 4+ year) lag between eliminating embedded in mutual funds and eliminating embedded in segregated funds, many near-retirement advisors (in particular) will simply make a modest change to their product mix in order to avoid having to make a more drastic change to their business model.
    - Dually-licensed registrants might be the most inclined to engage in product arbitrage. The major impact for them would be to have to re-paper their clients using insurance application forms. I have little insight to the other parts of this question.
23. I am unaware of any back-office limitations, but would caution you that some people (read: me) suspect that many firms opposed to this potential change will make excuses and suggest that technological and / or operational change will be too difficult to implement. The challenge, of course, is that claims of this sort are difficult to reliably confirm or refute (which, of course, is

precisely why they are made in the first place). The need for controls and oversight would simply change. Going forward, the need would be to ensure that clients were not being overcharged in some manner. At no point would any reputable person recommend not providing meaningful oversight with so much money at stake.

24. The short answer to your question is "of course". Once again, four quarters is neither less than nor more than one dollar. Changing how one pays ought to have no impact whatsoever on how much one pays. To the extent that it does (or to the extent that people allege that it does or that it has in the past), the reasons are pretty much entirely rooted in the parties not understanding how (and how much) they were paying in the first place. No rational person would be opposed paying the same amount in a different format.
25. Some ultra-progressive advisors (not entire firms) might move to a mixed model with a base retainer fee and an asset based fee on top. It guarantees a minimum annual income and often has specific (often annual) deliverables attached to the offering. This would likely round to zero as a percentage of the advisor population, however.
26. To my mind, the impact on representatives will be as follows:
    - career path – the industry will be more professional in the future. Much like young dentists entering the business, there would likely be an increased opportunity to buy a practice and to pay the retiring advisor out of the cash flow of that practice over a number of years
    - attractiveness of the job – massively positive. This is one of the very best career options available. It should do a better job than ever of attracting the best and the brightest.
    - typical profile of individuals attracted to the career – commensurate with a new doctor or accountant or engineer
    - recruitment – turning many good people away because there are only so many new spots / retiring advisors to go around
    - relative attractiveness of careers in competing financial service business lines – the top of the pyramid
27. My sense is that the mitigation measures being contemplated would do a good job of ensuring that access, choice and a level playing field are maintained for clients in all circumstances.
28. There are no other measures that I can think of that might help.
29. At the beginning of this document, prior to answering the specific questions, I made the point that "unintended consequences" is a bit of a loaded term since it's applicability depends primarily on what one's intent was in the first place. My example (again) is in regard to the population of advisors. I believe we have too many. As such, I believe that a reduction in the advisor population would be an extremely positive development for consumers – especially small consumers. As such, a reduction in the number of advisors would, to me, be both expected and intended. Most of all, it would be welcomed. Other stakeholders would likely point to a similar fact pattern and allege that these consequences would be a bad thing. In short, "unintended consequences" has become code for "bad thing". I simply disagree with this usage. The adjective is redundant and value-laden. These future outcomes should simply be called "consequences". The same goes for the word "choice". More choice is not necessarily better choice. Adding an inferior choice to a pre-existing menu that was entirely adequate is of not utility (and likely has a clear disutility) to those doing the choosing. With that out of the way, my view is that all consequences would be of the minor variety and could be dealt with relatively easily and purposefully.
30. My views are as follows:

a) Using a 1% trailing commission as a baseline, I will use my own fee schedule as a guide regarding the cross-subsidization of clients. My fees are 1.4% on the first $250,000; 0.8% on additional assets up to $1,500,000 and 0.5% on assets above $1,500,000. Accordingly, my fees are:

$250,000 – 1.4%; $500,000 – 1.1%; $750,000 – 1.0% (the point of indifference); $1,000,000 – 0.95%; $1,500,000 – 0.9%; $2,000,000 – 0.8%. Anyone who has an average client with less than $750,000 in investable assets would actually increase their revenue. This is also good news for the profitability of broker-dealers.

b) The short answer is "yes". Although my personal break-even point is $750,000, I also pass along product savings of about 1% relative to other market participants (MFDA registrants in particular). My experience is that clients with $500,000 to invest would gladly pay an advisor 10 bps more if that advisor had the decency to use product that cost the client 100 bps less. That's still a net saving of 90 bps ($4,500 annually on a $500,000 account) to the client family.

c) I'm unsure of what is being asked about eliminating a cross-subsidy. Nonetheless, I believe it might be useful to provide mandatory information to all clients with over $500,000 in mutual funds that they could realize substantial savings if they were to switch to a direct pay method and to using other products (e.g. ETFs and individual securities) as compared to their current product mix.

31. The industry could engage in a period of hyper-disclosure with a clear two page document given to all clients with embedded compensation that offers a clear, concise explanation of the change that can be easily understood (and not manipulated by unscrupulous people who continue to insist that advice is - and always was - free). This could be similar to the Client Relationship Disclosure documentation that became mandatory after the introduction of CRM I. Written client disclosure verifying that the documentation has been received would ensure that facts could not be misrepresented.
32. Transition options depend very much on the individual practice. It would be extremely difficult, in my opinion, for anyone to offer general advice on the topic of transitions, since various advisors will be at varying stages of readiness and so their clients will have different (both in identity and in magnitude) challenges in adjusting to the new order. Flexibility is paramount. My view is that an appropriate transition period would involve a clear deadline set out in 2017 with clear intermediate steps along the way. For instance, it could be announced that embedded compensation would end on December 31, 2020. It could be further announced that until that date, all funds sold with a back end load would need to have their penalty period expire on or before that date. A fund sold in 2018 might only have a 2-year DSC penalty and a fund sold in 2019 might only have a one year penalty. Funds sold in 2020 might carry a trailing commission, but would no longer be able to have a DSC of any kind. Finally, if technology allows the industry to reliably identify funds with embedded compensation (i.e. via discreet fund codes), then there could be a period where embedded funds and unbundled funds co-existed in client accounts, provided that there was a reliable way to avoid double-dipping (i.e. to ensure that only F Class funds attracted an advisory fee).
33. My dream would be to have all embedded compensation gone from Canada as we begin 2021. It is, to me, the first reasonable opportunity to do away with embedded commissions.
34. No caps should be placed on embedded commissions other than the elimination timeframes I noted above.
35. I believe the steps under consideration are sufficient.
36. There are no other alternatives that I can think of.

Thank you for your time and consideration. The exercise is a useful one and I'm sure you will be receiving a number of thoughtful responses to this important matter. Even though I strongly support the general thrust of this paper, I cannot help but wonder why it has taken so long for us to come this far. I was involved in the Fair Dealing Model Consultations over a decade ago.

Given my tenure on this file, you might imagine that there are some things that I find disheartening about the exercise. The consultation paper asks that commenters not re-hash previously-made arguments, but rather answer the pointed questions that the paper asks using demonstrable facts. The question that this begs is: "where was the insistence that people use only factual information previously"? There was a clear sense that embedded compensation causes advisor bias that came out of the Fair Dealing Model final report. In spite of this, the CSA only commissioned research that empirically demonstrated advisor bias recently- with two groundbreaking reports being released in 2015. My question to the CSA, therefore, is: "if you honestly wanted evidence of advisor bias, why did it wait you a decade to commission research to determine whether or not embedded compensation caused bias"? Dithering is not a course of action that can be reputably followed by anyone who purports to take purposeful action. If your house was burning, how long would you wait before you called the fire department? If your child was missing, how long would you wait until you called the police?

In spite of my obvious frustration, all will be forgiven if the people at the CSA can act purposefully rather than merely consult symbolically. The time has come to act. For the love of all that is decent in this world, please put an end to embedded compensation at the very first practical opportunity.

Sincerely,

John De Goey
[redacted]