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Re: Regulation respecting information to be provided to holders of individual variable insurance contracts relating to segregated funds (the Regulation)

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for independent and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.¹

A. FAIR Canada Supports the AMF's Regulation

In April 2023, the Canadian Council of Insurance Regulators (CCIR) adopted new cost and performance reporting guidance (the Insurance Guidance) for individual variable insurance contracts (IVICs). At the same time, the Canadian Securities Administrators adopted new rules to improve existing annual cost and performance reporting for investment funds.²

The Insurance Guidance aims to ensure that policyholders, like mutual fund unitholders, receive ongoing cost and performance information for their IVICs in an easy-to-understand format specific to their holdings. If approved, the AMF's Regulation would make the key elements of the Insurance Guidance legally binding in Québec.

¹ Visit www.faircanada.ca for more information.

² [CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance and Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations – Total Cost Reporting for Investment Funds and Segregated Funds, April 20, 2023.](#)

Consistent with the principles of fairness and transparency, consumers should be able to see all the costs associated with investing and how their investments are performing. The Regulation will provide IVIC holders with clearer, more complete cost information and performance reporting, helping them better assess their investments and achieve their financial goals.

We are pleased that the AMF is incorporating the Insurance Guidance into a regulation. While CCIR guidance promotes consistent regulatory standards and best practices across Canada, it is not legally binding. The Regulation will ensure that the critical aspects of the Insurance Guidance are binding and enforceable in Québec. Binding rules increase accountability, help prevent unfair practices that could harm consumers, and boost consumer confidence in financial markets. We urge other provincial and territorial regulators with rule-making powers to consider a similar approach.

B. Historical Performance Information is Important to IVIC Holders

The Regulation requires insurers to provide certain historical information about IVICs in the annual statement, subject to certain exceptions. This includes performance-related information about the total amounts invested and withdrawn, the change in value of investments in the IVIC for reasons other than investments and withdrawals, and the holder's personal rate of return since the IVIC began.

FAIR Canada supports the principle that insurers should, as much as possible, give contract holders historical performance information about their IVICs. This information is essential because it allows holders to see how their contract as a whole has performed over time. With this knowledge, they can make more informed decisions about the segregated funds in their contract, any changes to the IVIC, and how to plan for their financial goals. It also promotes transparency, which can improve customer satisfaction and trust between the holder and insurer.

C. Exceptions Should be as Narrow as Possible

1. Where Historical Information is Not Available

Section 4 of the Regulation includes an exception from the requirement to provide certain historical performance information in the annual statement. The exception applies where it is difficult or impossible for the insurer to use the data necessary to determine such information. The Regulation specifies that this means situations where, before the Regulation takes effect, the insurer: (a) optimized the information system where the IVICs were managed or (b) acquired contracts from another insurer after a merger or acquisition, and in both cases, the IVIC data was only partially transferred or based on a net amount.

Additionally, it includes instances where, after the Regulation takes effect, an insurer acquires contracts from another insurer and the IVIC data can only be partially transferred or based on a net amount because the other insurer was in one of the situations described above.

We recognize that there may be situations where it is challenging for insurers to provide historical performance information. However, we question why the Regulation does not require insurers to (1) make reasonable efforts, if any are available, to obtain the information, and (2) provide an attestation to the AMF detailing their efforts to obtain the information and explaining if they did not try to obtain it. The

Financial Services Regulatory Authority of Ontario's (FSRA) proposed total cost reporting rule for IVICs (the FSRA Rule) includes both such requirements.³ Please see our [comment letter](#) on the FSRA Rule.

FAIR Canada believes there should be some onus on the insurer to attempt to obtain the historical information. When an insurer acquires IVICs from another insurer, it seems reasonable to check whether the prior insurer can provide the missing information. We recommend that the AMF add a reasonable efforts requirement to the Regulation and provide clear guidance about what would be considered reasonable efforts.

FAIR Canada agrees that the insurer should notify the insured if information is missing from the statement and specify which information. We urge the AMF to go a step further and, like the FSRA Rule, require the insurer to provide an attestation to the regulator. In the attestation, the insurer would detail its efforts to obtain the information and explain if it did not try to obtain it. The attestation is critical, as it would allow the AMF to monitor the use of the exception and help limit potential abuses of it, ensuring it is only used when genuinely needed.

2. Where There is a Change in Tax Status

When the IVIC changes to a new tax vehicle, the Regulation allows insurers to use the date the contract was registered in the new tax vehicle as the issue date. For example, if an IVIC was held in an RRSP account that then converted to an RRIF, the issue date would be the date the contract was registered in the RRIF.

We support allowing insurers to use the date of the change in tax status as the issue date of the IVIC. In the case of the change from an RRSP to an RRIF, the account holder moves from the accumulation phase (i.e., contributing funds to the RRSP) to the payout phase (i.e., withdrawing funds from the RRIF). Given this fundamental difference in the nature of the tax vehicle, we believe it is reasonable to reset reporting to reflect the change.

D. Provincial Rules for IVICs Should be Harmonized Where Possible

The CCIR expects each member jurisdiction to adopt the Insurance Guidance by local guidance or regulation. To date, the AMF and FSRA have taken steps to incorporate the Insurance Guidance into a regulation or rule. However, as indicated above, there are key differences between the AMF and FSRA proposals. Further, the FSRA Rule does not include an exception for a change in the registered tax status.

We encourage the AMF and FSRA to work together to develop a consistent and harmonized approach to their respective rules. A unified approach will help to:

- Ensure IVIC holders across Canada receive the same type and quality of information regardless of where they live. This consistency makes comparing different contracts and providers easier, leading to less confusion and more informed decision-making.
- Simplify compliance for insurers operating in multiple jurisdictions, leading to lower costs for both consumers and insurers.

³ [FSRA Consultation on Proposed Total Cost Reporting Rule](#), s. 2(2).

- Facilitate more effective oversight and monitoring of the insurance industry. When reporting is standardized, regulators can more easily identify trends, risks, and issues.

E. Give the AMF the Power to Grant Exemptions to its Rules

The AMF's approach to instances where insurers cannot provide historical information differs from the approach in the Insurance Guidance. The Insurance Guidance allows insurers to request a full or partial exemption from specific expectations or to provide the required information in a different format. In contrast, we understand that because the AMF lacks the statutory authority to grant exemptions, the exception is in the Regulation itself.

We encourage the Québec government to consider giving the AMF the power to grant exemptions from its regulations. Including exceptions in a regulation requires the AMF to anticipate every possible exception that may be needed. This is difficult because the insurance industry constantly changes, and unexpected issues may arise.

The ability to grant exemptions would give the AMF the flexibility to tailor the exemption to the specific situation and respond to developments not foreseen when the regulation was drafted. It would also be more efficient than amending the regulation to accommodate unexpected circumstances. The Ontario Securities Commission has the statutory authority to grant exemptive relief from securities law requirements on a case-by-case basis. Under the Ontario *Securities Act* the exemption must not be prejudicial to the public interest.⁴ We would support a similar public interest requirement for the AMF.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for consumers. We intend to post our submission on the FAIR Canada website and have no concerns with the AMF publishing it on its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Tasmin Waley, Policy Counsel, at tasmin.waley@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

⁴ [Securities Act](#), R.S.O. 1990, c. S.5, s. 80.