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WHY BANNING EMBEDDED SALES COMMISSIONS IS A PUBLIC POLICY ISSUE

A commentary adapted from notes for the concluding panel of "The New Paradigm of Financial Advice" conference, held in Toronto on March 31, 2017

Henri-Paul Rousseau

SUMMARY

Regulatory authorities have consulted on the option of banning embedded sales commissions for Canadian financial advisors. Such an action would create more problems than it would solve. It would have serious ramifications for Canadians' access to financial advice and raise issues of choice, industry concentration and price transparency for clients seeking advice on investments and retirement.

Financial advisors have much greater knowledge of investments than their clients, who rightly expect value from their advisors' services. Advisors may also face conflicts of interest when they make recommendations about a financial product whose manufacturer might be paying the advisor for selling its products.

Banning sales commissions from the manufacturers and having the client pay the advisor directly instead brings its own problems. This is because financial advice is a good with peculiar characteristics.

Firstly, financial advice has three fundamental components – the alpha, beta and gamma factors. Together, they define the roles financial advisors play: (alpha) asset or portfolio manager, (beta) asset allocator (rebalancing a client's portfolio), and (gamma) coach with regard to savings discipline and financial planning. Financial advice has value thanks to the interplay between the three factors. Studies of the issue which have focused on one factor at a time, usually the alpha, produce results that are skewed; however, when studies measure all three factors, the evidence shows that financial advice has significant value, greater than the usual cost charged to clients.

Secondly, financial advice is an "experience good", meaning that clients don't know ahead of time how good financial advice is until they see how it works out. Assessing the value of financial advice may take many years. Since they

can't immediately measure what they're paying for, clients with modest incomes or wealth are usually willing only to pay low fees, or not pay at all up front. This means that banning embedded commissions would lead to a reduction in demand for advice from modest-income households.

The U.K. provides an example which should not be followed. Regulators there have banned embedded commissions, forcing clients to pay directly for financial advice. The result is that modest-income clients have decided not to seek financial advice, even though that decision will likely negatively affect their portfolios.

The dangers of this "advice gap" are being downplayed by those who believe that robo-advisors and banks can fill the need instead. In fact, robo-advisors and banks are mostly not equipped to step into the gamma role of coaching their clients.

A ban would also mean less choice in the market for a service that needs to be competitive and innovative to serve the broad spectrum of clients' circumstances, risk appetites and needs. In addition, smaller and independent product manufacturers and distributors would be squeezed out, creating a market concentration in the hands of the bigger players.

Pricing transparency might very well be another victim of a ban as a market with significant disparities in fee levels is created.

In crafting their policies, regulatory authorities should bear in mind that people need to have wide access to financial advice and to have an opportunity to become more financially literate. Keeping the market for financial services and products competitive, innovative and transparent is the path to continued success. A ban on embedded sales commissions would severely hamper these goals.

Financial advice is a multi-faceted service offered in a wide variety of types and paid for in numerous ways by a very heterogeneous population of households having very different needs and risk appetites over their lifetime.

This is the complex reality that regulators and policy-makers face as they try to guarantee a transparent, fair, innovative and competitive marketplace to retail investors. Retail investors are rightly expecting to receive value for services from their advisors, but generally have less understanding of financial matters than those advising them, who, in addition, are more knowledgeable about financial investment products and services.

To this asymmetry of information between the advisor and client we must add the inherent conflict of interest that arises from the fact that the advice will frequently come with a recommendation to buy or sell a financial product, in many cases manufactured by a third party that may be compensating the advisor for distributing its products.[1]

In this context – a classical "agency problem" in the jargon of economists – the tempting regulatory response might be to forbid advisors to receive sales commissions from product manufacturers and to mandate that any compensation be paid directly by the retail investor.

The conflict of interest would disappear and the client would have better control over the value for services received from the advisor. Simple, clean and transparent.

Such are the arguments made by regulators. This paper evaluates their strength and finds them wanting.

THE THREE FUNDAMENTAL COMPONENTS OF THE VALUE OF ADVICE

At the root of the debate on how to regulate advisory services, there is confusion between three fundamental components of the value of advice. They are:

1. The *alpha* factor. This is the role of the financial advisor as an *asset (or portfolio) manager*. The alpha factor compares the performance of a given asset with a specific market benchmark during a specific time period.

2. The *beta* factor. This is the role of the financial advisor as an *asset allocator*. It manifests itself through the investment portfolio policy recommended by the advisor, which should take into account the liquidity needs, the long-term financial goals and the investor's risk appetite. The beta factor ultimately embodies the value of constructing a portfolio that optimizes the prospective return for a given level of risk.

3. The *gamma* factor. This is the role of the financial advisor as a *coach* with respect to savings, financial planning habits and discipline. It stands for the impact of having a financial plan (and sticking to it) over many years. The gamma factor also stands for the disciplined response of the retail investor to market volatility, for adjustments to the investment portfolio policy over the life cycle of the investor's household, and for the better use of fiscal planning.

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[1] In such a case, this compensation would take the shape of a per cent charge on the assets under management in the investment fund, and would be included (or "embedded") in the management expenses of the fund.

Many studies on the value of advice focus solely on the alpha factor. When these studies show a positive alpha contribution, critics are quick to point to a large survivor bias in the sample – essentially attributing the positive alpha contribution to the fact that those active managers who were unsuccessful dropped out of the sample over time, leaving only survivors.

A good example of measuring the value of advice only on the basis of alpha is the study by the Council of Economic Advisers to the U.S. President on "The Effects of Conflicted Investment Advice on Retirement Savings", published in February 2015.[2] In this study, the value of advice is defined and measured purely by the size of the net performance of the assets selected. Unsurprisingly, it finds investment advice not only useless but downright damaging!

One has to admit that in the last 15 years or so, the case for active management has weakened. As a result, retail investors, most likely on the basis of advice from their financial advisors, have transferred billions of dollars in assets from active to passive products and strategies. This offers additional evidence that if the value of advice is contingent only on the alpha factor, it can indeed be very small. But if one takes into account the advice to reallocate assets (the beta factor) from high-cost active products to lower-cost passive products, then the value of advice could be actually much higher.

For another example of confusion about the value of advice, consider the role of the advisor in rebalancing the client's portfolio (again, the beta factor) after a major change in relative asset values. In such a scenario, the financial advisor will often recommend that the client sell funds that have performed relatively better (sell high) to buy funds that have performed less well (buy low). This makes sense, of course, in the context of portfolio rebalancing, and is of great value to the investor given the objectives of his or her investment portfolio policy; however, flow-of-funds studies[3] would indicate a poor asset selection and, potentially, a conflict of interest.

The econometric studies conducted by Montmarquette and Viennot-Briot (2015) have made a major contribution to the measurement of the value of advice. These studies indicate that, when all three components of advice are considered, the value of advice is significant and higher than the cost of the advice paid by the investor (see also Blanchett & Kaplan, 2013).[4] Over the years, substantial financial wealth is created. In addition, in their most recent study, Montmarquette and Viennot-Briot (2016) show that discontinuing the use of a financial advisor has seriously negative impacts on the level of household wealth.

WHY BANNING EMBEDDED SALES COMMISSIONS CREATES AN ADVICE GAP

If the value of advice is that important, and is proven to be much higher than its cost, and if banning embedded sales commissions is required to eliminate the inherent conflict of

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[2] Table 4, page 13 of that study lists numerous studies purporting to demonstrate under-performance due to conflicted advice, but in reality focusing only on the alpha contribution.

[3] An example of such a study is Cumming, Johan and Zhang, 2016. For a perceptive comment on the Cumming study, see Linton & Tobek, 2016.

[4] In their seminal piece on these concepts, Blanchett and Kaplan from Morningstar estimated the value of the gamma factor alone at 159 bps.

interest, then what could possibly be wrong with mandating that retail investors pay their advisor directly, as they would do for many other services?

Today, a very large proportion of household assets is managed with the help of an advisor (in Canada it is 66 per cent [*Investor Economics* Household Balance Sheet Report, 2016] and 80 per cent[5] in the U.S.), and a fee-for-services arrangement is widely used. The fee is generally expressed as a percentage of the value of assets under management; it tends to fall in proportion as the size of the asset pool increases. It is well known and observed around the world that households with considerable assets are ready to pay directly for advice through a fee expressed as a percentage of the value of their assets under management, such fee to be negotiated directly with their advisor.

Affluent households have either received their wealth through inheritance or they have built it over time – or both. In every case, such households would have learned about the value of advice through education, the influence of peers, or more likely, through experience.[6]

Indeed, the value of advice is normally learned or discovered through experience and through a relationship built over time.

This is a key characteristic of advice: the retail investor must learn, test or experience its value before he or she becomes ready to pay directly and explicitly for the service.

It is this characteristic that makes financial advice tricky to regulate well without creating unintended consequences, as discussed below.

Financial advice is what economists call an "experience good" (Darby & Karni, 1973; Lortie, 2016; Nelson, 1970).[7] Consumers cannot know in advance how good it is until they actually consume it. In the case of experience goods, the price the consumer is prepared to pay up front has to be very low relative to his or her income, otherwise he or she will not buy (or even sample) the good.

There are many experience goods: when a customer buys a new set of tires for a car, the distributor probably provides advice, but the customer is not asked to pay for this advice, which is an experience good, separately. (Further, the garage may very well receive an embedded sales commission from the tire manufacturer but this will not stop the customer from having the car repaired at the same garage over time since a trusted relationship is developed with the supplier).

Another example of an experience good is a bottle of wine. In this particular case, the consumer is prepared to pay a high price up front – but will typically have a guarantee that

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5 Source: Multiple; own computations.

6 Financial literacy has been shown to be a complement, rather than a substitute, to financial advice (except for a small percentage of self-advised retail investors).

7 As opposed to a "search good" or a "credence good". A search good is a product or service with features and characteristics that can be easily evaluated before purchase. An experience good is a product or service where the characteristics and features are assessable, but only after consumption or use. In the case of a credence good, its "utility" is difficult if not impossible to ascertain even after consumption. Pierre Lortie argues that financial advice is a credence good but the characterization as experience good changes nothing in the argument here.

if, once the bottle is opened and the wine tasted, the product is not good, the purchase price will be refunded.

In the case of financial advice, there is no possible unambiguous measure to use to offer a guarantee. The client has no choice but to experience the service over many years, in order to make a judgment about the quality and value of the advice received. Thus, the explicit and up-front demand for advice (the price the client is ready to pay) by a retail investor with a modest income will normally be very low, if not non-existent. Note that more price transparency[8] would not change this behaviour: the issue is not that the retail investor does not know the cost of advice; it is that he (or she) has not experienced the value of advice.

This explains why, in the U.K., where regulators have banned embedded sales commissions and required retail investors to pay directly for advice, a large proportion of low-income and low-wealth retail investors have chosen not to buy any advice (*Europe Economics*, 2014a). Moreover, on the supply side, in countries where embedded sales commissions have been abolished, the number of financial advisors has also fallen (*Europe Economics*, 2014b). In those countries, new clients at the lower end of the income and wealth spectrum who might have developed higher wealth over time in a commission model refused to engage in a long-term advisory relationship in the mandated fee-based model.

This phenomenon has been called the advice gap.

The size of the advice gap is not easy to measure, but in the U.K., Her Majesty's Government was concerned enough to consult on a pensions advice allowance of £500 for pre-retirees to obtain financial advice on retirement matters (Government of the U.K., 2016). The allowance was implemented in April 2017.

In Canada, the CSA acknowledges that an advice gap may develop as a consequence of a ban on embedded sales commissions. However, they assume that such a gap, should it appear, would be small and that in any case robo-advisors and Canadian banks would step in to supply any required advisory services (Canadian Securities Administrators, 2017).

This view fails to recognize that many clients require financial advice of the gamma type. Robo-advisors and banks might in many cases be in a position to offer financial advice focused on portfolio construction / asset allocation, i.e., the beta factor,[9] but mostly, they are not equipped to coach their clients. The gamma advice gap remains.

THE PUBLIC POLICY ISSUES BEYOND THE ADVICE GAP

The public policy issue is not limited to the size of the advice gap as measured by the number of Canadian households, especially at the lower end of the income and wealth spectrum (which may be averse to paying a fee for advice) or even to the size of the gamma

[8] Which, by the way, is not lacking in Canada, in particular with the point-of-sales and CRM2 standards that are being currently implemented

[9] Robo-advisors do not generally even have the ambition of bringing an alpha contribution; they limit themselves to offering passive (index-mirroring) exchange traded funds (ETFs).

advice gap (that is, the unavailability of financial advisors as coaches and supporters of the financial discipline of savers).

At stake is also the breadth of choices that the heterogeneous population of Canadian households has in terms of financial advisory services. Clients' circumstances, needs, risk appetites, and indeed, digital literacy, vary enormously; they are well served by a competitive and innovative market for the distribution of financial products and financial advice. Further, this distribution market is currently composed, in Canada, of numerous independent advisors and banks (and their investment dealers) competing with each other to serve the households using financial advice. This choice is at risk.

A further public policy issue, also linked with consumer choice, arises in connection with the proposed ban on embedded sales commissions: the ban is likely to have a profound impact on the structure of the market for the distribution of financial products in Canada beyond the demand and supply of financial advice. Banning embedded sales commissions will shift market power from manufacturing to distribution. This will weaken smaller and independent product manufacturers. In addition, smaller and independent distributors will find it hard to survive in an environment where their income depends on arrangements with retail investors, as opposed to compensation from product manufacturers. This will favour well-capitalized distributors, putting a premium on scale, and in the process will accelerate market concentration: integrated institutions like banks will win market share, also accelerating vertical integration in the marketplace.

The consequences for consumer choice in the event of further market concentration and vertical integration are obvious. The impacts on the price of financial advice cannot be ascertained yet, but it would seem heroic to assume that consumers will get a much better deal with fewer (and bigger) players in the market.

Even more policy issues emerge as a consequence of banning embedded sales commissions. To name only two at this point:

- Mandating a fee-based model will obscure the transparency of pricing for clients and lead to increasing price disparity for the same, or similar, services;
- The growing shift to passive investment products may increase systemic risk in our financial system.

It is because concerns of this nature prevailed that the governments of New Zealand and Sweden, while supporting regulatory reforms aiming at improving advisor conduct, opted not to ban embedded sales commissions (Government of New Zealand, 2016; Government of Sweden, 2017).

CONCLUSION

Following the global financial crisis of 2008, policy-makers and regulators around the world developed and implemented, first, enhanced macro-prudential policies and regulations, and second, policies and regulations aiming at improving market conduct. There is a broad consensus on the main objectives and principles underlying these reforms.

The third wave of regulatory reforms is concerned with professional conduct and, more specifically, advisor conduct. The debate on embedded sales compensation models for financial advisors is part of this third wave.

This paper raises the following public policy issues arising from a ban on embedded sales commissions:

1. It is likely to create an advice gap in Canada, due to households being averse to paying up front for a service they have not experienced. (Only one-third of Canadian households are using financial advice, which should also be cause for concern given our retirement system's reliance on individual savings.)

2. At any rate, it will likely cause a loss of choice for Canadians who have varying circumstances, needs and preferences.

3. It is also likely to cause a change in the market structure for the distribution of financial products and services by increasing the market's concentration and vertical integration. This raises questions of consumer choice and empowerment.

4. A loss in pricing transparency for clients, as well as an increase in systemic risk, may also follow from such a ban.

In conclusion, while it may not be part of the CSA's responsibilities to implement policies aiming at increasing access to financial advice, it certainly is the job of policy-makers to do so.

We need policies that both increase financial literacy, and ensure and improve wide access to financial advice.

In this context, we also strongly support the current policy efforts by provincial governments to require higher proficiency standards for financial advisors. This will improve both the quality and the consistency of financial advice throughout Canada. Higher proficiency standards will also create the conditions for implementing principles-based regulations, as opposed to cumbersomely prescriptive rules-based regulations.

Last, policy-makers should not lose sight of the need to ensure better access for all Canadians to a competitive and innovative market for the distribution of financial products.

This is a necessary condition for the long-term level of savings and for the retirement readiness of Canadian households.

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In recognition for his contributions as an economist, accomplished manager, and involved citizen, he was awarded honorary doctorates from Concordia University, Université Lumière Lyon 2, Université Laval, and Université de Sherbrooke. In 2006, he was named a “Great Montrealer” by the Board of Trade of Metropolitan Montreal’s Academy of Great Montrealers. He was awarded the Ordre of Montreal with the rank of Commander on December 17, 2016. He is Chairman of the Montreal Heart Institute Foundation and is active in a number of community and not-for-profit organizations in the sectors of health and education.

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