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Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
5160 Yonge Street, 16th Floor
Toronto, Ontario
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Re: Auto Insurance Take-All-Comers Rule

Insurance Bureau of Canada (IBC) and its member property and casualty insurers welcome the opportunity to comment on the Financial Services Regulatory Authority of Ontario's (FSRA) consultation on the take-all-comers rule. We understand that insurers provided FSRA with information on their reporting and oversight mechanisms to support compliance with the take-all-comers rule and with how they address instances of non-compliance. IBC's commentary addresses changes to the rule that will reduce the risk of consumer harm and/or sector instability.

A Changing Approach to Regulating Financial Services

In less than a year, FSRA made major strides in transitioning the approach to regulating financial services from one focused on prescribed rules to one focused on ensuring optimal outcomes for consumers based on business conduct principles. In the auto insurance sector, FSRA streamlined rate regulation to enhance price competition for consumers. FSRA also established a process for approving insurance policies for vehicle subscription programs. Following the COVID-19 lockdown, FSRA enabled insurers to offer rebates to their customers, to cap already approved but not yet implemented rate increases, and to reduce rates quickly to reflect the sudden change in people's driving habits and the risk associated with driving on less busy roads.

Designed with the well-intentioned objective of ensuring all consumers can access auto insurance in the province, the take-all-comers rule is rules-based regulation in an environment transitioning to principles-based regulation. The unexpected costs of the take-all-comers rule, which we believe outweigh the benefits, have been reduced capacity and competition for specific segments of the market. We believe that a different approach to addressing insurance availability could produce the outcome desired when the government developed the take-all-comers rule but without the unexpected costs.

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A Rules-Based Approach to Regulating Underwriting

Underwriting is a fundamental function of insurance. In property and commercial lines, insurers compete on their ability to identify their target customers, attract those customers and sell them an insurance policy at the best price for their risk profile. Insurers can deploy their capital to cover the risks of their target market.

In auto insurance, competing, attracting customers and covering risks are more complicated.

- Insurers have to file their underwriting rules with FSRA. Upon reviewing an insurer's underwriting rule, the *Insurance Act* requires that FSRA assess whether the rule *is subjective, is arbitrary, bears little or no relationship to the risk to be borne by the insurer in respect of an insured, or is contrary to public policy*. The meaning of the *subjective, arbitrary and contrary to public policy* criteria are ambiguous and susceptible to changing application with the political and regulatory circumstances of the time.

- *Ontario Regulation 664* prohibits insurers from using around two dozen factors when underwriting auto insurance. The prohibited list includes many predictive factors, such as minor collisions and credit, which are commonly used alongside other factors in other provinces and/or countries.

- The *Unfair or Deceptive Acts or Practices Regulation* includes additional rules for insurers to follow when underwriting. These rules reinforce the prohibition on credit when processing or responding to quotation requests or applications, prohibit insurers from offering rebates to their customers and require insurers to offer consumers the lowest rate among their affiliated companies.

Combined, the *Insurance Act* requirement for FSRA to review insurer underwriting rules based on ambiguous criteria, the prohibited underwriting factors in *Ontario Regulation 664* and the additional rules in the *Unfair or Deceptive Acts or Practices Regulation* distort the insurance market, including consumer outcomes.

By forcing insurers to underwrite all types of consumers, the take-all-comers rule and these additional regulations reduce the capacity and competition for specific segments of the market, as insurers have to maintain capacity to insure consumers who are not within their target market. Insurers also end up having to include, in the premium charged to lower-risk drivers, part of the cost of insuring higher-risk drivers. In addition, as the take-all-comers rule encourages all insurers to be a destination of choice for all consumers, insurers that want to specialize in certain segments of the market and devote their capital to that segment, such as higher-risk drivers, are discouraged from doing so. These specialty insurers would have to compete against all insurers, many of which are charging artificially low premiums for the specialty insurer's target market, at the expense of lower-risk drivers, because of the take-all-comers rule.

Due to the market distorting effects, the take-all-comers rule is rare. In North America, only Ontario, Alberta and North Carolina have this rule. Not surprisingly, these jurisdictions have among the most populated residual markets in the continent, even when compared to jurisdictions that used to have a take-all-comers rule, such as Massachusetts, New Jersey and South Carolina.

Residual Market Shares by Province and State

Ontario	Alberta	Nova Scotia	New Brunswick	North Carolina	Mass.	New Jersey	South Carolina
2.7%	**5.5%**	1.3%	1.3%	**30.3%**	1.3%	0.3%	0.0%

Data from MSA, Facility Association, NAIC and AIPSO. Canada data is from 2019. U.S. data is from 2015.

The reason the jurisdictions without a take-all-comers rule have such small residual markets is that their approach to regulating underwriting practices encourages insurers to segment the market, specialize in desired segments of the market and compete for those target customers. The General, Infinity, SafeAuto and Direct Auto are established U.S. insurers that serve higher-risk drivers and other non-standard risks. Ontario consumers would benefit from similar offerings.

A Principles-Based Approach to Regulating Underwriting

IBC recommends replacing the rules-based approach to regulating auto insurance underwriting with a principles-based approach. While this approach requires an overhaul of the existing rules for underwriting, it does not require FSRA to create a new regulatory framework. FSRA could apply the Canadian Council of Insurance Regulators' *Guidance: Conduct of Insurance Business and Fair Treatment of Customers.*

The fair treatment of customers' guidance is a principles-based approach to supervising the customer experience throughout the life-cycle of an insurance policy from the design of the policy until the insurer fulfils all obligations under the policy. It sets expectations on insurers for desired customer outcomes covering many aspects of underwriting, such as policy design, distribution, disclosures to customers, promotions, advice to customers and protecting personal information. In addition, it places an onus on insurer senior management teams to design and implement policies and procedures for ensuring optimal consumer outcomes, to monitor adherence to the policies and procedures, and to address any issues. Regulators across the country apply the guidance when supervising insurers and assessing their policies, procedures and practices, including their underwriting practices for other lines of insurance.

Implementing the Principles-Based Approach

IBC recommends the following changes to implement a principles-based approach to regulating auto insurance underwriting:

- Apply the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* when regulating insurer underwriting practices for auto insurance;

- Eliminate section 238 of the *Insurance Act* to remove the requirement for FSRA to approve insurer underwriting rules;

- Amend section 5 of *Ontario Regulation 664* to prohibit only underwriting factors that are unfairly discriminatory, such as race, creed, national origin, disability, income and education, and make corresponding changes to the prohibited rating factors in section 16; and

- Review section 2 of the *Unfair or Deceptive Acts or Practices Regulation* and remove provisions that clash with principles-based regulation and the fair treatment of customers' guidance.

Conclusion

Rules-based regulation is easy for governments and regulators to implement. It even makes it easy for the regulated entities to comply. The problems are the unintended consequences, such as the market distorting effects of the take-all-comers rule and the corresponding costs to consumers in the form of higher prices and less optimal choice in service providers in the market. While principles-based regulation is more difficult for governments and regulators to develop and implement and for regulated entities to adapt their practices and meet the objectives of the regulation, it should produce optimal outcomes for consumers as the senior management teams of the regulated entities ingrain the regulatory objectives within the cultures of their businesses.

We hope our commentary helps FSRA as it considers changes to the take-all-comers rule. If you have any questions please do not hesitate to contact me.

Sincerely,

Kim Donaldson
Vice President, Ontario