

Financial Services Regulatory Authority of Ontario
Notice of Changes and Request for Further Comment

Proposed Rule 2020-002
Unfair or Deceptive Acts or Practices (UDAP)

Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the **FSRA Act**), the Financial Services Regulatory Authority of Ontario (**FSRA** or the **Authority**) is proposing Rule 2020-002 – *Unfair or Deceptive Acts or Practices* (the **Proposed Rule**) under the *Insurance Act*.

FSRA posted a Notice and Request for Comment on the Proposed Rule (the **Original Notice**) on December 18, 2020, for a period of 90-days as required by the FSRA Act. FSRA is now proposing amendments to the Proposed Rule based on submissions and comments received through the consultation, which closed on March 18, 2021. Amendments to the Proposed Rule are set out below and provided in Appendix B.

With this Notice of Changes and Request for Further Comment, FSRA is seeking public comment on the Revised Rule in accordance with section 22(9) of the FSRA Act. Interested persons are invited to make written representations to FSRA with respect to the Revised Rule by August 11, 2021.

A Summary of Comments and FSRA Responses has been posted on [FSRA's webpage for the 90-day consultation](#).

Purpose of the Proposed Rule

The Proposed Rule is intended to define conduct which constitutes a UDAP through rulemaking authority for the purposes of section 439 of the *Insurance Act*. The [Original Notice](#) provides an expanded explanation of the substance, purpose and development of the Proposed Rule.

FSRA is exercising rulemaking authority provided under paragraph 67 of section 121.0.1(1) of the *Insurance Act* to prescribe, “any activity or failure to act that constitutes an unfair or deceptive act or practice under the definition of “unfair or deceptive acts or practices” in section 438 of the *Insurance Act* and prescribing requirements that, if not complied with, are considered UDAP.

UDAP are currently prescribed in O. Reg 7/00 (**the Regulation**) under the *Insurance Act*, which the Proposed Rule is intended to replace. According to the Regulation, actions defined as a UDAP may apply to insurers (including the officers, employees or agents of insurers), brokers, intermediaries, adjusters and providers of goods and/or services engaged in the insurance sector.

Concise Statement of Purpose of Proposed Changes

The Proposed Rule is based on the Regulation and provides a regulatory framework more in keeping with the FSRA Act and current market conditions. Amendments to the Proposed Rule are intended to align with the guiding principles set out in the Original Notice and advance the following statutory objects, as stated in the FSRA Act:

- Regulate and generally supervise the regulated sectors;
- Contribute to public confidence in the regulated sectors;
- Deter deceptive or abusive conduct, practices and activities by the regulated sectors;
- Promote high standards of business conduct;
- Promote transparency and disclosure of information by the regulated sectors;
- Protect the rights and interests of consumers; and
- Foster strong, sustainable, competitive and innovative financial services sectors.

Summary of Written Comments Received

FSRA requested input from all interested parties in the Original Notice, which emphasized five target questions concerning drafting, implementation and consumer protection. FSRA received 27 submissions, 24 comments and 10 questions from interested members of the public, including insurers, brokers, agents, lawyers, health care professionals, car rental operators and consumer advocates. After the consultation period closed, FSRA held follow-up meetings with industry associations, insurers, consumer advocacy groups and organizations representing service providers. A list of those who provided written submissions is outlined in Appendix A.

Stakeholders comments on the Proposed Rule included feedback on the following topics (not exhaustive):

- **Outcomes-focused Drafting / Reasonable Person Test** – Stakeholders expressed support for and sought clarity respecting FSRA’s outcomes-focused drafting, including the reasonable person test, the use of general or subjective terms, liability under the proposed rule and the consideration of size and type of business in assessments of reasonableness.
- **Rebating / Incentives – Property and Casualty Insurance Sector** – Stakeholders expressed general support for the new provision on incentives, although some raised concerns about relaxing the prohibition on incentives, including in relation to anti-competitive practices, potential consumer harm,

adding complexity to the sector and possible conflict with the Ontario *Registered Insurance Brokers Act* and associated regulations.

- **Rebating / Incentives – Life and Health Insurance Sector** – Stakeholders in the life and health insurance sector raised concerns about unsuitable sales, unfair sales practices, rate instability, creating an unlevel playing field and taxation issues, with some recommending that incentives be prohibited in the case of life insurance companies, agents and group insurance products.
- **Prohibited Conduct in Auto Insurance** – Stakeholders raised various concerns respecting prohibited conduct in the auto insurance sector, including the use of credit scores, standards related to rating and risk classification, the variance of processes and affiliated insurer conduct.
- **Implementation** – Several stakeholders raised questions about the implementation of the Proposed Rule, including public engagement and FSRA’s approach to compliance and enforcement.
- **Gaps** – Stakeholders identified perceived gaps in the Proposed Rule, including improved referencing and better capturing the substance of the Regulation as intended in with respect to certain provisions.
- **Other Issues**– Stakeholders raised a range of other issues including harmonization, noncompliance with the law, definitions, unfair conduct, the exemption for lawyers and paralegals and FSRA’s approach to regulating.

A more detailed summary, including a restatement of FSRA’s intent given stakeholder feedback, is provided in the [Summary of Comments and FSRA Responses](#).

Reasons for Proposed Changes

FSRA proposes to make the following amendments to the Proposed Rule.

1. Amended the definitions, including with respect to:

- i. **“contract of insurance” under s. 1(1)(v) to properly reference life insurance and accident and sickness insurance definitions under the Insurance Act.**

This change is being made in response to recommendations that the Proposed Rule reference s. 171(1) and s. 290 to ensure that all relevant types of insurance contracts are clearly in scope.

- ii. **the clarification under 1(2) by substituting the words “proportionate to the nature, size, complexity, operations and risk profile” for “commensurate with the insurer’s size and type of business” and removing provision (ii).**

s. 1(2)(i) is being amended in response to stakeholders seeking clarity or expressing concern about considerations of size and type of operations in relation to the “reasonable person” test. The change is intended to further clarify the sorts of considerations that FSRA would consider in assessing liability for action or inaction that could reasonably be expected to result in UDAP outcomes.

FSRA is removing s. 1(2)(ii) of the Proposed Rule as the entire *Human Rights Code* is intended to be in scope of the Proposed Rule, whereas the proposed clarifying provision could be interpreted as providing an exclusive list of provisions.

- 2. Expanded the scope of the exemptions for lawyers and paralegals under s. 2(3) so that it applies to all of s. 6 of the Proposed Rule; and, for clarity, added a definition for Authorized Representatives under s. 1 and corresponding changes throughout.**

This change is being made in response to a stakeholder listing situations under s. 6(4) and s. 6(5) where lawyers and paralegals may be legitimately involved in matters that relate to the signature of claims forms or communicating related information that warrant exemption from requirements under the Proposed Rule.

- 3. Reordered language in s. 5(1) to improve clarity and added the word “adjudication” to the activities listed in the provision.**

This change is being made in response to a stakeholder recommending that the word “adjudication” be added to the Proposed Rule given that the terms “adjust” and “settle claims” do not apply to the life and health insurance sector.

- 4. Expanded the scope of 5(1)(vi) to include providing claimants “clear, comprehensive and accurate information.”**

This change is being made in response to stakeholder concerns that information be provided to claimants in a manner that is both timely, as the section already required, and of high quality.

- 5. Broadening the reference under s. 7(1)(ii) to incentives prohibited by the law and corresponding changes under s. 7(1) to enhance clarity throughout the provision on incentives.**

These changes are intended to cover off prohibitions under other legislation, such as the *Registered Insurance Brokers Act*; ensure that the provision remains appropriately focused given broadened reference to “law”; and enhance clarity respecting the provision’s intent as it concerns the promotion or sale of insurance.

FSRA will be monitoring automobile insurance incentive program uptake as part of its ongoing supervision and take action when required. FSRA may request information from insurers using its authority under the *Insurance Act*.

- 6. Continue to prohibit life insurance and accident and sickness insurance in relation to s. 7(1)(i)-(iv).**

This change is being made in response to life and health insurance stakeholder concerns regarding potential consumer harms associated with removing the Regulation's prohibition against incentives. Through the course of examining received input, FSRA concluded that further stakeholder input and discussion are required in order to fully assess and address potential consumer risks. Therefore, the existing prohibition against incentives in the life and health sector will remain in force in the Proposed Rule.

7. Added provisions to preserve the substance of the Regulation as intended by the Proposed Rule:

- i. **s. 8(2) to prescribe persons being charged for any premium or fee other than as stipulated in a contract of insurance; and**
- ii. **s. 6(4)(ii) to prescribe claimants signing forms prior to their completion in full.**

These changes are being made in response to gaps noted by stakeholders where the new provisions did not sufficiently preserve the substantive intent of the Regulation under s 1.8 and s. 3(2)7 as intended by the Proposed Rule.

8. Added a coming into force clause, which would bring the Proposed Rule into force on the date that supporting consequential amendments to the *Insurance Act* related to the enforcement of the Proposed Rule come into force.

These changes are being made to provide a trigger for the coming into force of the Proposed Rule. According to this clause, the proposed rule will come into force when unproclaimed amendments to the *Insurance Act* brought forward in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* are proclaimed into force.

9. Technical, consequential and/or stylistic changes throughout the Proposed Rule to align with drafting conventions or the legislation, provide correct referencing, ensure consistency, enhance clarity and other minor improvements.

FSRA identified additional recommended non-substantive and technical improvements throughout the Proposed Rule while carrying out its review in response to received stakeholder feedback.

A more detailed summary of stakeholder feedback informing proposed amendments is provided in the [Summary of Comments and FSRA Responses](#).

Text of Revised Rule

For the text of the amended Proposed Rule, please see Appendix B.

Comments

Interested parties are invited to make written representations with respect to amendments to the Proposed Rule. Submissions received by August 11, 2021 will be considered.

Submissions should be submitted through the submission system on [FSRA's website](#).

Under the FSRA Act, FSRA is required to make all written representations publicly available. As a result, all submissions received will be posted on [FSRA's website](#) in a timely manner.

Appendix A – List of commenters

Appendix B – Revised UDAP Rule (Blackline Version)

Appendix C – Revised UDAP Rule (Clean)

Appendix A – List of Submissions

The following stakeholders provided written submissions on the Proposed Rule

Public Interest Advocacy Groups

Citizens Against Unfair Insurance Practices
FAIR Association of Victims for Accident Insurance Reform.

Insurance Industry Associations

Canadian Association of Direct Relationship Insurers (CADRI)
Canadian Association of Financial Institutions in Insurance (CAFII)
Canadian Life and Health Insurance Association (CLHIA)
Insurance Bureau of Canada (IBC)
Ontario Mutual Insurance Association (OMIA)
Travel Health Insurance Association of Canada (THIA).

Brokers / Advisors Industry Associations

Advocis
Canadian Association of Independent Life Insurance Brokerage Agencies(CAILBA)
Independent Financial Brokers of Canada (IFB)
Insurance Brokers Association of Ontario (IBAO)
Conference for Advanced Life Underwriting (CALU)
Canadian Group Insurance Brokers (CGIB)

Other Associations

Associated Canadian Car Rental Operators (ACCRO)
Coalition of Health Professional Associations in Ontario Automobile Insurance Services
Canadian Society of Chiropractic Evaluators
College of Chiropractic Orthopaedic Specialists
Ontario Association of Social Workers(OASW)
Ontario Trial Lawyers Association(OTLA)
Third-Party Administrators' Association of Canada (TPAAC).

Insurers

Allstate
Aviva
CAA Insurance
Canada Life
Desjardins
The Co-operators
Wawanesa

Self-Regulatory Organizations

The Law Society of Ontario (LSO)

**Appendix B – Amended Proposed Rule [2020-002]
Unfair or Deceptive Acts or Practices (Blackline Version)**

1 Interpretation

1(1) In this Rule,

(i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,

(ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,

(iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf.

~~(iii)~~(iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,

~~(iv)~~(v) “Contract of insurance” means:

(a) for a contract of life insurance, has the meaning ascribed to such term in s. ~~174~~171(1) of the Act,

(b) for a contract of ~~group~~group accident and sickness insurance, has the meaning ascribed to such term in s. ~~293~~290 of the Act, and

(c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,

~~(v)~~(vi) “Credit information” means information about a person’s creditworthiness, including ~~the~~the person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from ~~his or her~~such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,

~~(vi)~~(vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

~~(vii)~~(viii) “Prohibited factor” means:

(a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under

the Act, insurers are prohibited from using in the manner described in that section,

- (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990, (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or
- (c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

~~(viii)~~(ix) “Reasonable person” means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

~~(ix)~~(x) “Schedule” means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are ~~still~~ active claims,

~~(x)~~(xi) “Substantially deficient” means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the purposepurposes intended from the perspective of a reasonable person who is in the position of the intended recipient of ~~the~~those goods or services,

~~(xi)~~(xii) “Unfair discrimination” means discrimination which contravenes the provisions of the Ontario *Human Rights Code* or any other discrimination which FSRA, ~~in its published guidance~~, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and

~~(xii)~~(xiii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of ~~the~~those goods or services, would not charge or seek, or would not expect a reasonable person, who is in the position of the recipient of the goods or services, to accept.

1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.

~~1(2)~~—For greater clarity:

1(3) in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise

commensurate ~~with~~to that ~~insurers~~insurer's nature, size, complexity, operations and type of business, and risk profile.

~~(i) Sections 22, 25(2), 25(2.1), 25(2.2) and 25(3)(a) (b) of the Ontario Human Rights Code are applicable in assessing whether discrimination amounts to unfair discrimination under this Rule.~~

- 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or legal authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or legal authorized representative,
- (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person; or
 - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
- 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the ~~purpose~~purposes of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule:
- (i) if the action or conduct, including inaction or omission is committed by:
 - (a) an agent, broker, adjuster, insurer or any director, officer, employee or legal authorized representative of an agent, broker, adjuster or insurer, or
 - (b) any person, or any director, officer, employee or legal authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances ~~th~~that person knew about or, with reasonable diligence under the circumstances, ought to, have known~~-,~~ or

(ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances ~~th~~that person knew about or ought to, with reasonable diligence under the circumstances, have known.

2(3) ~~Section S. 2(1) of this Rule~~ does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in ~~sections 6(1), 6(2) and 6(3)-s. 6 of this Rule.~~

3 Non-Compliance with Law

3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.

3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.

3(3) Non-compliance with ~~the requirements~~any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

4(1) Unfair Discrimination~~:-,~~

(i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or

(ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

5(1) ~~Resolution~~ Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim ~~which would be considered unreasonable or unfair, such as, including~~ but not limited to:

- (i) treating a claimant in an arbitrary, capricious or malicious manner,
- (ii) not acting in good faith,
- (iii) seeking a result which is inequitable or inconsistent with ~~the~~ the claimant's rights ~~of the claimant~~ under the contract,
- (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
- (v) communicating in an untimely manner or misrepresenting the rights of ~~the~~ the claimant or obligations of ~~the~~ the insurer under the contract, or
- (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

5(2) With respect to automobile insurance:

- (i) non-compliance with the Schedule, including but not limited to:
 - (a) payment for goods or services not being made, or
 - (b) the cost of an assessment not being paid,

without reasonable cause, within the time period prescribed in the Schedule.
- (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if ~~the~~ that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or
- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.

- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.

6(4) With respect to ~~auto~~automobile insurance,

- (i) a claimant signing or being asked to sign a ~~claims~~any form or any other document,
- (a) in a form approved by the Chief Executive Officer, or
- (b) that is specified in a guideline applicable for the purposes of the Schedule,
- before the goods or services related to such a form or document have been provided and which provides verification that a good or service was provided to such claimant, or
- (ii) a claimant signing, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a Guideline~~guideline~~ applicable for the purposes of the Schedule ~~before the goods or services related to such a form or document have been provided.~~

~~6(4)~~6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person, who is in the position of the intended recipient, would consider false, misleading or deceptive.

7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
- (i) as an incentive or inducement for a person to take an action or make a decision ~~that would encourage that person~~relating to buy an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable ~~insurance product~~action or decision by a reasonable person licensed to sell such an insurance product,
- (ii) which is otherwise prohibited under the Act, Regulations or Rules by law,
- (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,

(iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including, but not limited to, tied selling or predatory pricing, ~~or~~

(v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or

~~(v)~~(vi) if related to automobile insurance, which is, based, in whole or in part, on, or is calculated by reference to, prohibited factors.

7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.

~~7(2)~~7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.

~~7(3)~~7(4) For the ~~purpose~~purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.

~~7(4)~~7(5) For the ~~purpose~~purposes of this section, a gift or thing of value will not be considered an incentive or inducement if ~~the~~that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of ~~the~~such recipient would consider to be inappropriate, inaccurate or misleading, respecting:

- (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
- (ii) an insurance claim, the claims process or whether a policy provides coverage, or
- (iii) any comparison of contracts of insurance.

8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

9 Prohibited Conduct in ~~Auto~~Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to:
- (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
 - (ii) using credit information or a prohibited factor,
 - (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
 - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
 - (v) misclassifying a person or vehicle under the risk classification system used by ~~the~~an insurer or that ~~the~~an insurer is required by law to use,
 - (vi) making the issuance or variation of a policy of automobile insurance conditional on ~~the~~an insured having or purchasing another insurance policy,
 - (vii) engaging in unfair discrimination,
 - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
 - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
 - (x) communicating in an untimely manner or misrepresenting the rights of ~~the~~a claimant or obligations of ~~the~~an insurer under the automobile insurance contract, ~~or~~
 - ~~(xi) any other practice or conduct which the Authority has identified in published guidance as unfair treatment for the purpose of this section.~~
- 9(2) ~~credit~~Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than:

- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under subsections 227-(1) of the Act, or
- (ii) in accordance with the consent obtained in compliance with the *Personal Information Protection and Electronic Documents Act (Canada)* applicable privacy laws of the person to whom the information relates.

10 Affiliated Insurers

10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to the insured or potential insured, having regard to all of the circumstances, including but not limited to:

- (i) each insurer’s declination grounds,
- (ii) each insurer’s rates and risk classification systems,
- (iii) each insurer’s method of distribution; or
- (iv) whether the insurers only recently became affiliated.

11 Coming into Force

11(1) This Rule comes into force on the date that the amendments set out in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* come into force.

**Appendix C – Amended Proposed Rule [2020-002]
Unfair or Deceptive Acts or Practices (Clean Version)**

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,
- (iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf,
- (iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
- (v) “Contract of insurance” means,
 - (a) for a contract of life insurance, has the meaning ascribed to such term in s. 171(1) of the Act,
 - (b) for a contract of accident and sickness insurance, has the meaning ascribed to such term in s. 290 of the Act, and
 - (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,
- (vi) “Credit information” means information about a person’s creditworthiness, including a person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,
- (vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,
- (viii) “Prohibited factor” means,

- (a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,
 - (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or
 - (c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),
- (ix) “Reasonable person” means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,
 - (x) “Schedule” means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are active claims,
 - (xi) “Substantially deficient” means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of those goods or services,
 - (xii) “Unfair discrimination” means discrimination which contravenes the Ontario *Human Rights Code* or any other discrimination which FSRA, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and
 - (xiii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of those goods or services, would not charge or seek, or would not expect a reasonable person who is in the position of the recipient of the goods or services, to accept.
- 1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.
- 1(3) For greater clarity, in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate to that insurer’s nature, size, complexity, operations and risk profile.

- 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or authorized representative,
- (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person, or
 - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
- 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the purposes of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule,
- (i) if the action or conduct, including inaction or omission is committed by,
 - (a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or
 - (b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person’s business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

- (ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.

2(3) S. 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in s. 6 of this Rule.

3 Non-Compliance with Law

3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.

3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.

3(3) Non-compliance with any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

4(1) Unfair Discrimination,

- (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
- (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,

- (i) treating a claimant in an arbitrary, capricious or malicious manner,
- (ii) not acting in good faith,
- (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,

- (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
- (v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or
- (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

5(2) With respect to automobile insurance,

- (i) non-compliance with the Schedule, including but not limited to,
 - (a) payment for goods or services not being made, or
 - (b) the cost of an assessment not being paid,
 - without reasonable cause, within the time period prescribed in the Schedule,
- (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or
- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

- 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.
- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.
- 6(4) With respect to automobile insurance,
 - (i) a claimant signing or being asked to sign any form or any other document,

- (a) in a form approved by the Chief Executive Officer, or
- (b) that is specified in a guideline applicable for the purposes of the Schedule,
 - before the goods or services related to such a form or document have been provided and which provides verification that a good or service was provided to such claimant, or

- (ii) a claimant signing, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a guideline applicable for the purposes of the Schedule.

6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person who is in the position of the intended recipient, would consider false, misleading or deceptive.

7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
- (i) as an incentive or inducement for a person to take an action or make a decision relating to an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable action or decision by a reasonable person licensed to sell such an insurance product,
 - (ii) which is otherwise prohibited by law,
 - (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,
 - (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including but not limited to, tied selling or predatory pricing,
 - (v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or
 - (vi) if related to automobile insurance, which is, based, in whole or in part, on, or is calculated by reference to, prohibited factors.

- 7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.
- 7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.
- 7(4) For the purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.
- 7(5) For the purposes of this section, a gift or thing of value will not be considered an incentive or inducement if that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

- 8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of such recipient would consider to be inappropriate, inaccurate or misleading, respecting,
 - (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
 - (ii) an insurance claim, the claims process or whether a policy provides coverage, or
 - (iii) any comparison of contracts of insurance.
- 8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

9 Prohibited Conduct in Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to,
 - (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
 - (ii) using credit information or a prohibited factor,

- (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
 - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
 - (v) misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is required by law to use,
 - (vi) making the issuance or variation of a policy of automobile insurance conditional on an insured having or purchasing another insurance policy,
 - (vii) engaging in unfair discrimination,
 - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
 - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
 - (x) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the automobile insurance contract.
- 9(2) Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than,
- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under s. 227(1) of the Act, or
 - (ii) in accordance with the consent obtained in compliance with applicable privacy laws of the person to whom the information relates.

10 Affiliated Insurers

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.
- 10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to an insured or potential insured, having regard to all of the circumstances, including but not limited to,
- (i) each insurer’s declination grounds,

- (ii) each insurer's rates and risk classification systems,
- (iii) each insurer's method of distribution, or
- (iv) whether the insurers only recently became affiliated.

11 Coming into Force

11(1) This Rule comes into force on the date that the amendments set out in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* come into force.