

Financial Services Regulatory Authority of Ontario (FSRA)
Publication of Board Approved Rule on FSRA's Website
Proposed Rule [2020-002]
Unfair or Deceptive Acts or Practices

Introduction:

Please find enclosed herein the materials required to satisfy the requirements prescribed by paragraphs (1)-(5) of s. 23(2) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”) for Proposed Rule 2020-002 Unfair or Deceptive Acts or Practices (the “**Board Approved Rule**”). The materials herein have been compiled by the Financial Services Regulatory Authority of Ontario (“**FSRA**”), following the most recent comment period (“**Second Comment Period**”), which launched on July 14, 2021 and concluded on August 11, 2021.

FSRA's board of directors approved the Board Approved Rule on December 16, 2021.

Background:

As the regulator of Ontario's insurance system, FSRA is granted rulemaking authority pursuant to paragraph (67) of s. 121.01(1) of the *Insurance Act* (the “**Act**”) to prescribe:

- i. Any action or failure to act as an unfair or deceptive act or practice (“**UDAP**”);
and
- ii. Requirements, which if not complied with, constitute a UDAP.

Prior to making the Board Approved Rule, FSRA sought and received feedback from a range of interested parties, including insurers, insurance intermediaries, consumer advocates, healthcare sector representatives, and lawyers, on FSRA's intention to transition O. Reg. 7/00 (the “**UDAP Regulation**”) into a FSRA rule. Stakeholder feedback indicated that the UDAP Regulation remained too prescriptive and ultimately, constituted a barrier to innovation.

The first proposed UDAP rule's (“**First Proposed Rule**”) comment period was launched on December 18, 2020 and concluded on March 18, 2021 (“**First Comment Period**”). FSRA analyzed stakeholder feedback received during the First Comment Period and amended applicable provisions of the First Proposed Rule, leading to the development of the second proposed UDAP rule (“**Second Proposed Rule**”). FSRA analyzed stakeholder feedback received during the Second Comment Period and amended the Second Proposed Rule, ultimately leading to the development of the Board Approved Rule.

The Board Approved Rule is responsive to stakeholder feedback and the dynamic nature of Ontario's insurance system by redrafting what constitutes a UDAP in outcomes focused language and with principles-based requirements. Outcomes focused language and principles-based requirements strengthen consumer protections, enhance competition in the insurance sector and permit FSRA to examine the particular

circumstances to achieve desired regulatory outcomes. Outcomes focused language is also intended to provide FSRA with sufficient regulatory discretion and clear legal tests to determine whether a UDAP has occurred based on a consideration of all material circumstances.

If The Honourable Peter Bethlenfalvy, M.P.P. (the “**Minister**”) approves the Board Approved Rule, then pursuant to s. 24(1) of the FSRA Act, the Board Approved Rule will become an in force FSRA Rule 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.

Delivery to the Minister:

The Board Approved Rule and materials required by paragraphs (1)-(3) of s. 23(1) of the FSRA Act were delivered to the Minister on December 20, 2021.

No Action Taken by the Minister:

In accordance with s. 24(2) of the FSRA Act, the Board Approved Rule will come into force on March 5, 2022, if the Minister does not take any action with respect to the Board Approved Rule.

Statement of Substance and Purpose:

FSRA’s rulemaking on the Board Approved Rule aims to advance the following 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.

[FSRA’s 2020-2023 Annual Business Plan](#), which was approved by the Minister in June 2020, committed to exploring opportunities for FSRA rulemaking regarding UDAP. The Board Approved Rule delivers on this commitment by promoting safety,

fairness and choice for insurance customers. It also supports FSRA's cross-cutting commitments to enhancing effectiveness and transparency, removing barriers to innovation, aligning with international best practices and transitioning towards principles-based regulation.

The Board Approved Rule is intended to advance FSRA's objects, with a focus on transparency and protecting the public interest, while enhancing regulatory efficiency and effectiveness. It aims to achieve these goals and further the ongoing regulatory dialogue between FSRA and stakeholders on conduct in the insurance sector by:

- Providing outcomes-based definitions of UDAP that are consistent with FSRA's objects, facilitate better outcomes and support the transition to principles-based regulation;
- Providing clear and objective standards for determining misconduct that incorporate examples of unfair treatment and reference to the Ontario Human Rights Code to enhance precision, and allowing for supplemental FSRA guidance where permitted;
- Removing barriers to innovation in the area of customer incentives, including rebates and incentives provided that they:
 - do not lead to decisions that are against the interests of consumers;
 - are not prohibited by law;
 - are transparently communicated; and
 - are not unfairly discriminatory, anti-competitive or reliant on prohibited factors.
- Bringing greater alignment with certain Canadian Council of Insurance Regulators ("**CCIR**") and Canadian Insurance Services Regulatory Organizations ("**CISRO**") Fair Treatment of Customers ("**FTC**") guidance provisions, particularly in the areas of misrepresentation and unfair claims practices; and
- Reducing regulatory burden through consolidation, streamlining and removing redundant or spent provisions.

FSRA's objective of removing specific barriers to innovation through the Board Approved Rule is aligned with the Ontario government's commitment to provide the Chief Executive Officer ("**CEO**") of FSRA with, "the power to operate an insurance regulatory sandbox to pilot initiatives that bring new consumer-focused products and services to market more quickly in response to changing consumer needs."¹ In this

¹ Ontario Ministry of Finance, *Ontario's Action Plan: Protection, Support, Recover* (Queen's Printer for Ontario, 2020), 117.

regard, the government has passed amendments which would permit the CEO of FSRA, on application by a person or entity, to exempt persons or entities from requirements under the Act that are prescribed by regulation, and specify the conditions to which the exemption is subject, should the CEO be of the opinion that doing so would not be prejudicial to the public interest. The amendments will come into effect on a day to be named by proclamation of the Lieutenant Governor.

Written Comments Received and Responses to Significant Concerns:

In accordance with paragraphs (4)-(5) of s. 23(2) of the FSRA Act, FSRA must publish on its website a summary of written comments received and FSRA's responses to significant issues and concerns brought to FSRA's attention during the First Comment Period and Second Comment Period.

- [First Comment Period](#)
- [Second Comment Period](#)

Immaterial Amendments made to the Second Proposed Rule:

Throughout the Second Comment Period, FSRA received further stakeholder submissions and, in response, FSRA made eight immaterial amendments to the Second Proposed Rule. As such, FSRA is not required to publish an additional notice of change for a third comment period ("**Third Comment Period**"), which would otherwise be required by s. 22(7) of the FSRA Act if FSRA proposed material changes.

The immaterial amendments made by FSRA are limited to:

- **Amendment #1:** Adding the word "also" after "rule" into s. 7(2), in order to further clarify that s. 7(1)(i) to s. 7(1)(v) apply to automobile insurance. Amendment #1 fully preserves the substantive intent of s. 7(2);
- **Amendment #2:** Removing s. 6(4)(i)(a)-(b), as the conduct captured by the aforementioned section is sufficiently covered by s. 6(1). In making Amendment #2, FSRA is removing duplication, rather than altering consumer protections or removing a provision which would otherwise render a particular action or failure to act as a UDAP;
- **Amendment #3:** Adding the words "or being asked to sign" into s. 6(4), in order to align the wording of s. 6(4) with other subsections in s. 6, which refer to both the conduct and attempted conduct. Amendment #3 fully preserves the substantive intent of s. 6(4);

- **Amendment #4:** Italicizing “Plan for Care and Opportunity Act (Budget Measures), 2018” in s. 1(5) for stylistic and consistency purposes. Amendment #4 fully preserves the substantive intent of s. 1(5);
- **Amendment #5:** Adding a comma after the word “omission” in s. 2(2)(ii) for stylistic and consistency purposes. Amendment #5 fully preserves the substantive intent of s. 2(2)(ii);
- **Amendment #6:** Removing the comma after the word “Information” and “recipient” in s. 6(5) for stylistic and consistency purposes. Amendment #6 fully preserves the substantive intent of s. 6(5);
- **Amendment #7:** Removing the comma after the word “is” in s. 7(1)(vi) for stylistic and consistency purposes. Amendment #7 fully preserves the substantive intent of s. 7(1)(vi); and
- **Amendment #8:** Removing the definition of unfair discrimination in s. 1(1)(xii) and amending s. 4 in order to incorporate the operative portions of the previous definition of unfair discrimination directly into s. 4(1). Amendment #8 fully preserves the substantive intent of unfair discrimination in the Board Approved Rule.

Board Approved Rule:

The Board Approved Rule in English is available at [Unfair or Deceptive Acts or Practices \(“UDAP”\) Rule 2021](#)