

March 18, 2021

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, Ontario
M2N 6S6

RE: Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices

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) *Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices*.

We support FSRA's two-staged approach for transforming the existing *Unfair or Deceptive Acts or Practices Regulation* into a principles-based rule. Several provisions in the regulation, such as the ban on rebating, are already outdated. By the government revoking the regulation and FSRA replacing it with a rule, FSRA should be able to ensure that the rule constantly provides adequate protections for consumers without preventing those consumers from maximizing the benefits associated with more innovation, product and service choice, and competition.

Below are our answers to FSRA's four questions in the Notice of Proposed Rule and Request for Comment.

1. Are there any parts of the Proposed Rule that are too general or require further detail, including for the purposes of clarity or closing possible gaps?

Principles-based regulation often has ambiguous provisions as a means of encouraging the regulated entities to determine the best approach for achieving the desired consumer outcomes. The draft rule includes new terms, such as "reasonable person", "substantially deficient", "reasonable apprehension", and "accessible", which are ambiguous and that FSRA will use to assess insurers' conduct. There will be an adjustment period for insurers as they apply these terms in practice when establishing policies and procedures for business conduct as well as for FSRA as it applies them when supervising and enforcing the rules.

The ambiguity in certain terms creates uncertainty. And it is an important part of principles-based regulation. Insurers are prepared to adapt their practices accordingly and we recommend that FSRA be transparent around how it plans to supervise and enforce the rule.

2. Are there any implementation considerations, such as transition issues or the coming into force date of the Proposed Rule that interested parties would like to bring to FSRA's attention?

Insurers are likely already in compliance with the provisions in the draft rule. However, to allow insurers to conduct their due diligence to ensure that their policies and procedures reflect FSRA's desired consumer outcomes, we recommend that insurers have a six-month transition period starting from the publishing of the final rule.

3. Are there sections of the Proposed Rule that are redundant and can be removed without compromising consumer protection?

In our October 6, 2020 letter on this topic, we questioned the need for some of the existing regulatory provisions in the forthcoming rule. Specifically, we noted that the *Insurance Act* already requires insurers to secure regulatory approval prior to implementing their auto insurance underwriting criteria, rates and risk-classification systems. In addition, we noted that *Regulation 664* already prescribes the prohibited underwriting and rating criteria, which include credit information and several other factors. These Acts and regulations referenced above already address the following provisions in the Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals section of the draft rule:

- *(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 to be assumed by the insurer,*
- *(v) misclassifying a person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use.*

We recommend that FSRA remove these four provisions.

In addition, we note that FSRA proposes to add the following provision in the same section:

- *(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 insurance,*

This section, meant to address the take-all-comers requirement, is already stipulated in the Insurance Act. Furthermore, the language used is sufficiently broad that it could potentially capture legitimate business practices, such as prioritizing marketing materials towards a target consumer, or internal processes to prevent and detect fraud. We recommend that FSRA remove this provision as well.

4. Are there any other issues or amendments to the Proposed Rule that FSRA should consider as it proceeds to its intended second stage of work in this area?

Although the rule is predominantly written in a principles-based manner, there remain provisions that are prescriptive. For example, there remains a requirement on insurers to offer the lowest rate

amongst their affiliated companies. This acts as a barrier to competition and innovation and in certain scenarios conflicts with the Fair Treatment of Customers Guidance and the resulting customer experience. We understand that the second stage of the review presents the opportunity to transform all aspects of the rule.

We note the links of this effort to transform the *Unfair or Deceptive Acts or Practices Regulation* with the efforts to improve the take-all-comers rule and transform rate regulation. However, the work on the three pieces of regulation appears independent of each other. We expect FSRA has a vision for each work stream, but it is unclear to us how they connect. It will be important for the second stage of transforming the Unfair or Deceptive Acts or Practices rule to ensure that all stakeholders involved in the consultation are aware of the links and timelines associated with the various work streams and the overall objectives.

The standard auto insurance product is provincially prescribed, leaving minimal ability for insurers to offer customized products based on consumer preferences. As a result, insurers must rely predominantly on underwriting, rating and distribution to compete and innovate. The current versions of the *Unfair or Deceptive Acts or Practices Regulation*, the take-all-comers rule and rate regulation have prevented Ontario consumers from having the same level of choice in companies, price competition and innovative offerings that are customary in other countries. FSRA's work to review and transform auto insurance regulation is especially crucial to improving the customer experience.

We hope our commentary is helpful to FSRA as it finalizes the rule. We look forward to participating in the second stage of the review.

Yours sincerely,

A handwritten signature in black ink, appearing to read "K. Donaldson", with a long horizontal flourish extending to the right.

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