



Stephen Frank  
President and CEO

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Mr. Mark White  
Chief Executive Officer  
Financial Services Regulatory Authority of Ontario (FSRA)  
5160 Yonge St, 16<sup>th</sup> floor  
Toronto, ON M2N 6L9

### **Public Consultation Re: Revised “Unfair or Deceptive Acts or Practices” Rule**

Dear Mr. White,

On behalf of the Canadian Life and Health Insurance industry (CLHIA), we would like to thank you for taking into consideration our feedback during the first consultation on the proposed “Unfair or Deceptive Acts or Practices” Rule (UDAP). This Rule, like the current Regulation on this topic, supports our shared expectation that consumers are to be treated fairly. However, we continue to have concerns that the amended proposed UDAP rule will result in negative unintended consequences for the life and health insurance industry.

#### **About CLHIA**

The CLHIA is a voluntary association with member companies that account for 99 per cent of Canada's life and health insurance business. The life and health insurance industry is a significant economic and social contributor in Ontario. It protects about 10.9 million Ontario residents and makes almost \$45 billion a year in benefit payments to residents in Ontario (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits and the remaining 10 per cent goes to beneficiaries as death claims). In addition, the industry has nearly \$280 billion invested in Ontario's economy. A large majority of life and health insurance providers have licences to operate in Ontario, with seventy headquartered in the province.

The following are our detailed comments on the amended proposed UDAP changes:

#### Case-by-case pricing

Section 4 describes differences in pricing between individuals with the “same class” of insurance and the “same expectation of life” as “unfair discrimination”. We agree that in many circumstances it is fair to expect that the client purchasing a product will be treated the same way as other clients purchasing similar products. However, where a client’s individual circumstances are markedly different, case-by-case pricing can be fair and not deceptive. Consider the following examples:

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Toronto, Ontario M5K 1G8  
416-777-2221 www.clhia.ca

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79, rue Wellington Ouest, bureau 2300  
CP 99, TD South Tower  
Toronto (Ontario) M5K 1G8  
416-777-2221 www.accap.ca

- For corporate policies, or business-to-business products such as group insurance, case-by-case pricing allows insurers flexibility to tailor products so that they are suitable to an individual client's needs. Here, clients are not generally comparable and cannot be categorized into classes.
- Affinity group products are targeted to large interest groups such as automobile or professional associations. These groups bring with them large numbers of members with increased purchasing power. It is reasonable to expect that they will be able to negotiate preferred rates based on the volume of their business.
- Retail clients may also receive adjusted pricing based on the individual client circumstances. This can happen, for example, with large policies where there may be competitive bids.
- Wealth products, such as segregated funds, may be sold to individuals who qualify for high net worth pricing based on the invested amount. In such circumstances, certain costs associated with a policy may be reduced or eliminated.

Restricting an insurer's ability to price insurance on a case-by-case basis, particularly in the types of situations outlined above, stifles innovation and competition. This is not in the consumers' interest. Also, we would note that the concept of "classes of insurance" has a different connotation under s. 43 of the *Insurance Act*.

Similarly, s. 3 of O. Reg. 7/00 limits unfair deceptive acts to practices that are "[...] committed on or on behalf of a person with the expectation that a benefit will be received that is funded directly, or indirectly, out of the proceeds of insurance". This allows other negotiated terms between insurers, larger service providers, or other vendors and provides insurers with the flexibility to tailor services when appropriate. We want to highlight that in the draft of the proposed Rule, this specific language is found in s. 2(2)(b). As a result, it applies to any person, director, officer, or employee rather than applying to the events or circumstances in s. 3 to s. 10 of the Rule. We would recommend moving this language to s. 2(1) to avoid any unintended disruptions.

FSRA may further consider clarifying that this Rule would not apply to reinsurance. Reinsurance is a business-to-business product, where insurance coverage varies in a manner that is not within the scope of this Rule.

#### Other Fees and Charges

The addition of s. 8(2) creates an overly broad prohibition on any fee other than what has been stipulated in a contract for insurance. We would suggest replacing this subsection with a rule that requires transparency of fees and charges. This approach would be more flexible and still address the FSRA's public policy concern.

As drafted, s. 8(2) may prohibit fees to pay for administrative expenses such as photocopying, the provision of medical records, or for additional copies of a policy. It may not be possible to identify what these future costs will be at the time of contracting. Additionally, s. 8(2) may prohibit fees that relate to other negotiated services outside the contract for insurance that are valuable to consumers and help insurers to support clients with unique needs. Finally, we note that this provision may also conflict with s. 174(7) of the *Insurance Act* that allows reasonable fees in relation to providing copies of documents.

## Human Rights Code

We disagree with how s. 1(1)(xii) seeks to expand the definition of Unfair Discrimination and think the Rule should adopt the current definition in the *Human Rights Code*. Human rights issues are resolved under a separate legal framework and tribunal system. We believe that expanding the definition Unfair Discrimination beyond what is captured by the Human Right legislation is unnecessary and will duplicate existing dispute resolution processes adding undue costs, complexity and confusion for consumers and insurers. Further, removing the requirement included in the previous version of the Rule, that discrimination will be defined in “published guidance” adds to this ambiguity.

An additional concern for insurers is that the proposed change would introduce new variation across provinces in what is already a complex provincial Human Rights legislative environment. Insurers often underwrite national accounts for employers in many provinces and the current regulatory framework allows insurers to underwrite the benefit plans for such large employers in a consistent way. Introducing additional requirements in Ontario will create issues for how policies are designed, sold, and adjudicated. In addition, it could impact the actuarial processes for insurers. For example, provincial human rights legislation includes exceptions for insurance and discrimination in both the Human Rights legislation, and in some cases in the Employment Standards legislation and regulations (for employee benefit plans and pensions as an example). Cumulative, this all increases uncertainty and regulatory burden on the industry and, as noted, we do not believe the additional requirements are warranted.

## General Comments

We have some observations on the drafting of the proposed changes that we would also like to share.

- Clause 4(1)(i) references life insurance products but it does not reference accident and sickness products.
- Clauses 7(1)(vi) and s. 7(1)(v) may be reversed. Subsection 7(2) specifies that s.7(1)(i) to s. 7(1)(v) is specific to automobile insurance. As written s. 7(1)(v) applies to life insurance specifically.
- Subsection 8(1) implies that unfair or deceptive practices includes “inaccuracies”. Errors can occur inadvertently in good faith and should not be consider unfair or deceptive. We would ask that the reference to inaccuracies be removed.
- Where reference is made to *Law Society Act* in s. 2(3) you may consider adding “or similar legislation” so that the exemptions applies to lawyers licensed outside of Ontario.

## Harmonization

We understand that FSRA intends to incorporate FTC principles into its requirements by updating the UDAP Rule. We would encourage harmonization with CCIR/CISRO’s “Conduct of Insurance Business and Fair Treatment of Customers”. Doing so would minimize regulatory burden and better set a framework that would support consistent consumer outcomes, and expectations, across the country.

Thank you again for considering the industry’s feedback during the first consultation and providing us with the opportunity to continue to provide our feedback. We would be please to meet with you or your staff

at your convenience and look forward to continuing to work collaboratively with FSRA on this important matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Frank". The signature is written in a cursive style with a large initial "S" and a stylized "F".

Stephen Frank