

September 24, 2021

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

Re: FSRA seeks feedback on proposed approach to communicating enforcement actions

The 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 approach to communicating enforcement actions. While we believe that regulated entities acting in violation of regulatory rules are generally uncommon and unintentional, it is critical to a well-functioning financial system that appropriate enforcement actions be undertaken and, when necessary, clearly communicated. The decision to communicate these actions should be done with transparency and clear evidence of wrongdoing. Doing so will reinforce consumers' confidence that the financial entities that they rely on are following the rules. To that end, we support FSRA's development of guidelines clarifying how and when it announces its enforcement actions to the public.

Responsible Efforts by Regulated Entities

Insurers have considerable interest and experience in ensuring that its clients are treated fairly. The overall tone of the proposed guidance implies that it is generally the regulator that discovers when regulated entities have acted in error. It leaves out importance references to the many existing touchpoints between insurers and consumers when compliance questions may arise and are amicably resolved. For example:

- All insurers have an Ombudsman function to investigate and address any client or consumer concerns; and
- As outlined in Section 1.6.2 of the standard Ontario Auto Policy, insurers will refund any incorrect premium charges, including interest, to the client. It is common that when insurers encounter these rare instances, the insurer itself rectifies the situation with the client through refunds or rate reductions and when required, subsequently reports the error to the regulator itself.

Existing mechanisms such as these mean that disputes are generally addressed between an insurer and its client. To contribute to public confidence in the regulated sector, we recommend including language in the guidance which clearly states the expectation that regulated entities are vigilant and proactive in identifying and addressing issues of potential non-compliance with regulatory rules within their own operations.

Announcement of Ongoing Investigations

Insurers place great importance on following regulatory requirements and guidance. While much of the proposed guidance is clear on how and why FSRA will announce its enforcement actions, the language related to the announcement of ongoing investigations employs terms such as 'credible evidence' and 'immediate harm', which are not defined and vulnerable to wide interpretation. IBC's members have

expressed grave concerns about the potential for serious reputational damage to the regulated entity and to Ontario's financial services sector as a whole in the event that FSRA announces the existence of an incomplete investigation based on evidence ultimately determined to be inaccurate or otherwise incorrectly interpreted. For this reason, we strongly recommend removal from the guidance of the ability for FSRA to announce ongoing investigations unless enforcement actions have actually been determined.

IBC appreciates the opportunity to comment on FSRA's proposed approach to communicating enforcement actions. As noted, while we support this initiative in principle, the section dealing with announcement of ongoing investigations is very concerning to us. Consequently, I will be contacting you in the near future to request a meeting to discuss this important matter.

Yours sincerely,

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

Kim Donaldson
Vice President, Ontario
kdonaldson@ibc.ca

cc Tim Bzowey, Executive Vice President, Auto Insurance/Insurance Products, FSRA
cc Huston Loke, Executive Vice President, Market Conduct, FSRA
cc Kim Donaldson, Vice President, Ontario, Insurance Bureau of Canada