ONTARIO MUTUAL INSURANCE ASSOCIATION

Address: 350 Pinebush Road, Cambridge, ON N1T 1Z6
Mail: PO Box 3178, Cambridge, ON N3H 4S6
Tel: 519.622.9220 Web: www.omia.com

June 11, 2024

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

Dear FSRA,

Proposed Guidance on Corporate Governance for Ontario Incorporated Insurance Companies and Reciprocal Insurance Exchanges

Thank you for the opportunity to comment on the Proposed Corporate Governance Guidance posted on April 1, 2024.

As the Ontario Mutual Insurance Association, we are providing feedback on behalf of our 34 member companies, all of whom are property-casualty insurers organized as mutual insurers and incorporated under the Ontario statute.

Our members underwrite farm, home, automobile, and commercial insurance policies. Each of our mutuals is over 100 years old, with the oldest having been established in the 1850s. Our companies are predominantly located in small towns and cities across the province. Each of our members' policyholders is a fully participating mutual member. The boards of directors of our mutuals are composed of policyholders and all policyholders are eligible to vote at annual general meetings and participate in any refunds granted from surplus.

Our member mutuals are small insurers in a rapidly consolidating property-casualty insurance sector and we have seen a consolidation trend among our members. Our mutuals, when premium volume is aggregated, write a significant volume of farm, home, and auto insurance in the province. When regionality is considered, many of our mutuals are a vital market in their region and provide essential capacity, availability, and choice for Ontario consumers.

In addition to the Guidance on Corporate Governance, there was proposed guidance released on Operational Risk and Resilience for Ontario Incorporated Insurance Companies and Reciprocal Insurance Exchanges. We will provide separate comments on that guidance but some of our commentary relating to corporate governance will by necessity touch on the proposed Operational Risk and Resilience Guidance as in many cases they are integrated in practical terms.

We acknowledge the level of attention to detail and the clarifying language provided in the Corporate Governance Guidance. Our understanding is that in a principles-based regulatory environment the guidance approaches and frameworks will include some prescriptive language and measures where required by statute but for the most part will not include specific rules-based direction. Nonetheless, the reference to intended outcomes in the Interpretation Section lends emphasis and weight to expectations on the adoption of “common industry practices of effective corporate governance”.

We will comment on specific areas of the corporate governance guidance, but generally will not be taking issue with the principles and concepts outlined. We will provide feedback on the potential impact on small insurers, identify areas of potential interpretation gaps, and emphasize the need for proportional implementation of the guidance.

Proportionality

In the opening purpose statement on page 2 the guidance notes that "the assessment of corporate governance is made in the context of the insurer's size, complexity, and risk profile and may have implications for the Insurer's Overall Risk Rating (ORR) under RBSF-I."

FSRA has been a proponent of proportionality in regulation and, as an association OMIA, also supports proportionality as a critical element in ensuring a competitive and diverse insurance marketplace in Ontario. Our members typically are the smallest insurers in any given category and the scale and scope of their operations does not always coincide easily with some of the more complex processes, procedures, and policies that may be considered “common industry practices” required for larger entities with more complex business models.

Our members typically pursue a stable and long-term approach to strategy and consumer outcomes. We believe this aligns well with the intended outcomes in the guidance, however by necessity the level of documentation or formality in our members’ organizations may vary significantly. That having been stated, given the longevity and values-based approach to providing member-based insurance, we believe the practical application of values and culture at the mutuals are well aligned with meeting intended outcomes.

One of the challenges for all insurers, but particularly for smaller insurers, in assimilating and adapting to this guidance will be reaching an understanding as to the appropriate level of documentation and resourcing required to meet some of the assessment parameters.

To date we believe that FSRA has shown an open and flexible approach to understanding the intended outcomes for small insurers and we believe that to meet the overall goal of proportionality this flexibility and openness should continue in the regulatory relationship.

Principle One- The Role of the Board of Directors

An area which we believe is of specific concern to our members revolves around the wording relating to the role of boards of directors in human capital and resource planning.

By way of explanation, mutuals have evolved, dating back to early days, away from operational models where directors and boards were involved in day-to-day transactional activities and were highly integrated into the management of the mutual. Over time as mutuals have grown and requirements of operating a property-casualty insurers become more complex, mutual boards have moved to a governance-based model and have intentionally adapted to being less involved with human capital and resource planning at the staff and operational level.

It is often stated in governance training for boards that technically boards of directors have one employee, the CEO. The CEO in turn has the primary responsibility for the remaining management and staff.

With this in mind, we have concern as to the interpretation of board activities in the potential direction and oversight of areas such as appointment, performance review, and compensation of the key members of the senior management team in oversight functions, as well as compensation practices, including at risk compensation.

We believe that a nuanced approach to this is intended within the guidance. We acknowledge that boards are responsible to ensure that compensation and incentive schemes, as well as the other key practices, are in place to ensure that there is consumer protection, integrity, and utmost good faith within the operations of the insurer. We do not believe that the intention of the language under principle one is to have boards of directors directly involved in staff management but rather to have systems in place to assure themselves that the CEO and other key members of the management team are effectively managing staff.

We acknowledge that given the potential complexities of employee compensation schemes in parts of the financial services sector it is important to ensure that these align with good practice, but we believe further discussion on these elements of Principle One could add additional clarity to the oversight intentions of the guidance.

Principle Three- Effectiveness of Oversight Structures

In addition to the Proposed Corporate Governance Guidance the Operational Risk and Resilience guidance also speaks to the concept of “three lines of defence”.

As FSRA continues to assess Ontario incorporated insurers we look forward to gaining additional insight into how the assessment process will balance the evaluation of the three lines of defence concept in small organizations where from a practical standpoint three lines of defence may not be possible or where innovative and adaptive approaches by the organization may be needed to meet intended outcomes. We believe this will be a critical factor in ensuring that the administrative and operational cost of establishing three lines of defence is not prohibitive or even counterproductive in maintaining effective, responsive organizations.

By way of the context, we might also make a general comment as related to transparency and the need for "unfiltered" information from senior management and the oversight functions to the board.

The traditional mutual governance model includes frequent meetings of the boards of directors, much of which is open and frank dialogue with senior management. We recognize that the guidance is trying to ensure that there is adequate documentation and assurance that the right types of conversations are taking place, however we do believe that it will take a period of evolution to reach a common understanding as to this type of our relationship.

The mutual model has also evolved over the past century to include a critical element of trust between boards, CEOs, and other members of the mutual organization. Much of the Proposed Corporate Governance Guidance appears to be structured to ensure that boards don't take their responsibility for oversight of senior management lightly. We don't believe this should suggest a lack of trust between the board and management or a presumption that management will not provide balanced and transparent reporting to the board. We believe that the alignment and frequent, open, and often informal communication between board and management has been an important part of mutuals meeting policyholder expectations through sound member-based decision making.

Conclusion

Overall, we believe that the principles contained in the guidance are based on a thoughtful and comprehensive approach to ensuring good long-term governance. With that in mind there will continue to be a period of evolution and a period during which smaller insurers will need to assess the cost involved with adapting to the governance and to meeting the documentation and reporting expectations inherent in the guidance and assessment process.

We believe it will be important for all stakeholders ensure the assessment process remains proportional, gathers only the information needed for effective assessment, and is built and streamlined in such a way as to minimize the financial impact on the entity and subsequently on policyholders.

We acknowledge that FSRA has openly invited dialogue with individual insurers, and we commend these efforts, and encourage future opportunities for clarification and feedback on effective corporate governance.

We thank you for the opportunity to provide comments on this guidance.

Yours truly,

John L. Taylor BBA, FCIP, FCLA, CHRL
President