

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF PROPOSED RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016*

PROPOSED RULE 2024 – 003

AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

[07/15/2024]

1. Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the “**FSRA Act**”) the Financial Services Regulatory Authority of Ontario (“**FSRA**” or the “**Authority**”) is publishing for public consultation the following Notice of Proposed Rule (“**Notice**”). In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the Proposed Fraud Reporting Service Rule (“**Proposed Rule**”), within 90 days of publishing this Notice. The consultation period will close on [10/14/2024].

If approved by the Minister of Finance (“**Minister**”), the Proposed Rule will prescribe both the information insurers must report under section 101.3 of the *Insurance Act* (the “**Act**”), and the requirements associated with reporting the prescribed information. More specifically, the Proposed Rule will prescribe the threshold and scope of information insurers are required to report about automobile insurance fraud; and the timing and process requirements regarding how an insurer shall report the prescribed information to the Fraud Reporting Service (“**FRS**”).

For the text of the Proposed Rule please see **Appendix A** to this Notice.

2. Statutory Authority under which the Rule is proposed

Section 101.3 of the *Act*, when proclaimed into force, will require insurers to provide the Chief Executive Officer or an agency designated by the Chief Executive Officer (referred to collectively as the “**CEO**” in this Notice) with information prescribed by the Proposed Rule about automobile insurance fraud at such times and in accordance with such requirements as may be prescribed by the Proposed Rule.

To this end, section 101.3 further provides FSRA the express statutory authority to directly or indirectly collect, use and disclose personal information about identifiable individuals

provided that the collection, use, or disclosure is for the purpose of assessing and detecting automobile insurance fraud.

Section 101.3 in conjunction with paragraph 8.2 of subsection 121.0.1(1) of the *Act* gives FSRA the authority to prescribe the information outlined in section 101.3 in accordance with the Proposed Rule included in this Notice.

3. Statement of the substance and purpose of the Proposed Rule

The **purpose** of the Proposed Rule is to prescribe information that automobile insurers must provide to FSRA, and the corresponding requirements regarding the reporting of the prescribed information. Once in force, the Proposed Rule will give operational effect to FSRA's Fraud Reporting Service ("**FRS**").

The main outcome FSRA aims to achieve through the implementation of the FRS is to collect information to create a baseline of data that will quantify the amount of automobile insurance fraud and better enable the automobile insurance sector to assess and detect such fraud in Ontario.

The purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario;
- creating a baseline for fraud detection; and
- identifying trends throughout the industry.

Achieving these outcomes supports FSRA's goal of reducing consumer harm caused through fraud, and reducing unnecessary externality costs to be borne by consumers.

The Proposed Rule and accompanying Interpretation Guidance (the "**Guidance**") represents the first phase of the development of a functional FRS. FSRA anticipates a second phase of the FRS where information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

The **substance** of the Proposed Rule centers around prescribed information about automobile insurance fraud, and requirements associated with the insurer's statutory duty to report the prescribed information.

With regards to the information prescribed about automobile insurance fraud, the Proposed Rule defines a “fraud event” as a deceptive act or omission intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance. Included in this definition is a non-exhaustive list of categories that each instance of a fraud event may fall under.

With regards to the prescribed information about automobile insurance fraud, the Proposed Rule prescribes that insurers must report all information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

The Proposed Rule further clarifies that this prescribed information must be reported if and only if the insurer has taken action based on the information that provided reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

Once an insurer holds information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur and have taken action based on said information, an insurer is required to report the information to the FRS within thirty (30) days after the close of each quarterly period of the calendar year.

With regards to requirements associated with the insurer’s statutory duty to report the prescribed information, the Proposed Rule requires that all prescribed information be complete, accurate and up-to-date, and imposes an ongoing obligation on the insurer to take reasonable steps to ensure the information remains complete, accurate and up-to-date or otherwise recommend that the information be removed from the FRS.

FSRA will be publishing for public consultation **Guidance** that will set out FSRA’s interpretation of several requirements under the Proposed Rule regarding:

- The scope of information an insurer is required to provide when reporting information about a “fraud event” to the CEO;
- The threshold of what constitutes “reasonable grounds for the insurer to believe” that a fraud event has occurred or is likely to occur; and
- The “action” an insurer may take that triggers an insurer’s requirement to report prescribed information to the FRS.

The Guidance will also set out FSRA’s approach in administering the Proposed Rule, including:

- How FSRA will supervise insurers in reviewing their policies, processes, systems and associated controls to ensure compliance with the Proposed Rule;

- How FSRA will exercise its discretion when enforcing against the requirements in the Proposed Rule; and
- How FSRA will utilize its enforcement powers to address non-compliance with requirements in the Proposed Rule.

4. Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will operationalize the reporting of information about automobile insurance fraud by insurers to the FRS.

Section 1 – Definitions

This section outlines key definitions used throughout the Proposed Rule, including the definition of a “fraud event”. The broad scope of what may constitute a fraud event is further informed by the definition’s non-exhaustive list of several categories of fraud that are pertinent to the automobile insurance sector.

Section 2 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 3 – Prescribed information under subsection 101.3(1) of the Act

This section sets out the prescribed information under subsection 101.3(1) of the *Act*.

This section:

- prescribes the scope and threshold [or standard] of information that every insurer licensed under the *Act* is required to report under subsection 101.3(1) of the *Act*. Specifically, an insurer is required to *report all information* in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event *where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur*;
- prescribes the activity-based trigger for an insurer to report the prescribed information, such that an insurer is required to report prescribed information within thirty days after the close of each [quarter] only if they have taken action or made a decision based on the prescribed information;

- requires that insurers include personal information in the prescribed information *only if* the personal information is necessary the purpose of assessing and detecting automobile insurance fraud; and
- requires insurers to de-identify all personal information in the prescribed information unless disclosure of the personal information is necessary for the purpose of assessing and detecting automobile insurance fraud.

Section 4 – Reporting requirements – Prescribed information

This section sets out additional requirements regarding the reporting of the prescribed information outlined in section 3 of the Proposed Rule.

This section:

- requires that an insurer ensures that all prescribed information is complete, up to date, and factually correct prior to reporting the information as required; and
- requires an insurer to inform the CEO and take reasonable steps to correct information if the insurer becomes aware that information reported is not complete, up to date, or factually correct.

Section 5 – Transitional

This section clarifies that insurers are not required to report the prescribed information in accordance with the rule until after [date TBD].

Section 6 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that subsection 101.3(1) and clause 8.2 of subsection 121.0.1(1) of the *Act* comes into force and 15 days after the Rule is approved by the Minister.

5. Unpublished Material

In making the Proposed Rule, FSRA has retained the consultant services of the *International Fraud Training Group*, who have provided FSRA with unpublished written materials that have been relied in part to inform drafting of the Proposed Rule.

6. Alternatives Considered

i. Prescribing specific data points that insurers would be required to report under subsection 101.3(1) of the Act

The Proposed Rule requires insurers to report all information in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

As an alternative, FSRA considered prescribing an all-encompassing list of data points that insurers would be required to submit to the FRS. This approach was not followed for three reasons.

First, a prescriptive list of data points about a "fraud event" could only be amended via an amendment to the Proposed Rule. The time it takes to amend an Authority Rule would not be adaptable to an ever-evolving list of data points that may be material to assessing and detecting fraud events.

Second, prescribing an all-encompassing list of data points is inconsistent with FSRA's principles-based and outcomes-focused approach to regulation. A prescriptive approach would overshadow the intended outcome of insurers reporting information according to a particular standard of proof or threshold of materiality and would turn the Proposed Rule into a listing and indexing exercise of prescribed information.

Third, FSRA recognizes that the ever-evolving nature of automobile insurance fraud requires flexibility and adaptability in the types of information that insurers must report to the FRS. FSRA intentionally has chosen not to prescribe all relevant data points *before* information begins to be reported by insurers. In other words, the most relevant information that will ultimately achieve the FRS's purpose will become more apparent only *after* insurers begin reporting to the FRS. FSRA intentionally chose not to limit the scope of information to a prescribed list that may or may not be reflective of market realities.

ii. Alternate thresholds of information an insurer would be required to report under subsection 101.3(1) of the Act

The Proposed Rule requires insurers to only report information to the FRS where the information provides *reasonable grounds for the insurer to believe* that a fraud event has occurred or is likely to occur. FSRA's interpretation of information that would constitute "reasonable grounds to believe" is outlined in the Guidance.

FSRA considered alternative thresholds that would impact the scope of information that insurers would ultimately need to report to the FRS including:

- **No threshold (i.e., “all information about a fraud event”)**: This would require insurers to report all information, without any modification or clarification of scope, about a fraud event, as defined in the Proposed Rule. FSRA did not choose this option as it provided uncertainty to the scope of information to be provided.
- **“Reasonable grounds to suspect”**: This threshold is lower than the prescribed “reasonable grounds to believe” threshold in the sense insurers would be required to report information where the information provides mere “suspicion” that a fraud event has occurred or is likely to occur. FSRA did not choose this option as this threshold may invite information that may be premature, inaccurate, or unverifiable. Reasonable grounds to believe, on the other hand, require more than mere suspicion, as well as verifiable evidence relating to the belief. Further, “suspicion” may be inconsistently interpreted throughout the sector, resulting in ambiguity regarding the scope of information that is required to be provided.
- **“Belief based on a balance of probabilities”**: This threshold is higher than “reasonable grounds to believe” in the sense that this threshold is similar to the civil standard of proof required in civil trial cases. FSRA did not choose this option as this threshold may invite too little information to be reported. Once information has reached this threshold, it already provides a basis for seeking civil legal action. Rather, FSRA is requiring information that serves the purpose of enabling the assessing and detecting of automobile insurance fraud, information that reaches this civil standard includes instances of fraud has already been assessed and detected and is ready for adjudication.
- **“Adjudicated finding of a fraud event”**: Similar to the above, this is the highest threshold of information, that would require reporting to the FRS only if the information is used to adjudicate a finding a fraud event. This option was not chosen because it would result in the lowest amount of information being reported, albeit resulting in highly reliable information.

iii. Alternate timing requirements for when an insurer is required to report information to the FRS

The Proposed Rule requires insurers to report the prescribed information to the FRS on a quarterly basis only if the insurer has taken action or made a decision based on information that meets the prescribed threshold. FSRA’s interpretation of information that would constitute “action” or a “decision” is outlined in the Guidance.

FSRA decided on this requirement to provide sufficient time for the insurer to prepare information that must be reported, and to ensure that information that may be premature or not actionable is not reported to the FRS.

As an alternative, FSRA also considered alternate timing requirements for insurers to report the prescribed information to the FRS:

- **Reporting information within a prescribed number of days following the conclusion of an insurer’s investigation about a fraud event:** FSRA considered an arbitrary number of days (e.g., 30 days) that an insurer would have following the conclusion of an investigation to report the information. This option was not chosen because of the arbitrariness of the time period and also because the conclusion of an investigation was determined by FSRA to be too high of a standard to require information to be reported.
- **Reporting information within a “reasonable” amount of time following the conclusion of an insurer’s investigation about a fraud event:** Similar to the above, this option was not chosen because FSRA decided there needs to be some certainty about the timing requirement (i.e., a “reasonable” amount of time may differ significantly throughout the sector), and that the conclusion of an investigation is too high of a standard to require information to be reported.
- **Real-time Reporting once information reaches prescribed threshold:** This option was not chosen due to perceived inconsistencies and ambiguities regarding what point-in-time an insurer is required to report, as well as the administrative burden real-time reporting would place on insurers and FSRA. For example, it is possible that one insurer may subjectively determine that their information gathered does not reach the threshold of “reasonable grounds to believe” that a fraud event has occurred, whereas a different insurer with the same information may subjectively determine their information does reach the prescribed threshold and thus be required to report.

7. Anticipated Costs and Benefits

Qualitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA to monitor and evaluate developments and trends of fraud in the automobile insurance industry;
- Holding insurers accountable for reporting fraud; and
- Developing a common understanding of automobile insurance fraud amongst all participants of the automobile insurance system.

Qualitative costs associated with operationalization of the Proposed Rule may include:

- Familiarization with a net-new reporting requirement;
- ‘Growing pains’ associated with net-new reporting requirement, including erroneous or premature reporting; and
- Understanding how to comply with a principles-based and outcomes-focused reporting requirement.

Quantitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA’s ability to quantify the prevalence of automobile insurance fraud in Ontario;
- Gathering of information about automobile insurance fraud may inform how resources can be most efficiently allocated to reduce costs to insurers and ultimately consumers.

New quantitative costs associated with operationalization of the Proposed Rule for both FSRA and insurers may include:

- Anticipated system and data collection resources needed to adapt to new reporting requirements.
- Data integrity and quality during the initial stages of reporting may cause initial challenges.
- Investment in data security and encryption technology will need to be considered to protect data.

8. Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

Appendix A – PROPOSED RULE 2024 – 003

1 Definitions

1(1) In this Rule,

- (a) “Act” means the *Insurance Act*, RSO 1990, c I.8, as amended;
- (b) “FSRA Act” means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;
- (c) “prescribed information” means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.
- (d) “Rule” means this Authority Rule 2024 – 003
- (e) “fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:
 - i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;
 - ii. Obtaining a benefit under a contract of insurance through fraudulent claims;
 - iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;
 - iv. Fraudulent activity in the selling or distribution of insurance products; and
 - v. Fraudulent activity committed by internal employees of an insurer.

2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

- 2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.
- 2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.
- 2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

3 Prescribed information under subsection 101.3(1) of the Act

- 3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.
- 3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.
- 3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.
- 3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

4 Reporting requirements – Prescribed information

- 4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.
- 4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become

incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

- (a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and
 - (a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.
- 4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:
- (a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or
 - (b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

- 4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

5 Transitional

- 5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

6 Coming into force

- 6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.