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June 5, 2020

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
5160 Yonge Street, 16th Floor
Toronto, Ontario
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Re: Request for Comment – Auto Insurance Take All Comers Rules 2020-004

Approaching FSRA's 1-year anniversary, Aviva would like to congratulate FSRA on a successful launch in 2019 as well considerable progress already in 2019 and 2020. It is so far clear that FSRA is committed to a philosophic and operational shift in how it will regulate financial services in Ontario. We are supportive of the journey going forward and wish to participate and advise in any manner that we can be of service. Aviva believes that there is a great opportunity to modernize the regulation of financial services in Ontario and improve auto insurance for Ontario drivers.

We are pleased to participate in the consultation regarding the Take All Comers Rules.

The "Take All Comers" Rules sets out the grounds on which an insurer may decline to provide insurance to a customer. There are three main components to this rule:

- Section 237 of the *Insurance Act* prohibits insurers from declining, terminating or refusing to renew a policy for any reason prohibited in the regulation.
- Section 238 prohibits insurers from declining to issue, terminate or refuse to renew a policy except on grounds filed with FSRA.
- Section 2(1)(8) of Regulation 7/00 *Unfair or Deceptive Acts or Practices* ("UDAP") requires insurers to provide the lowest rate available within its affiliated companies when insuring or renewing a contract.

However, our intention is to demonstrate that in insurance markets where there is healthy competition; there is no reason for these rules.

The reliance on the "Take All Comers" rules signals an unhealthy marketplace and elements of a dysfunctional system. Taken together, these rules disallow companies from specializing or providing niche offerings – and causes cross-subsidization of bad drivers by all drivers. If companies were allowed to price properly for any risk, this might be less of an issue, but strict rating and pricing rules make this a greater challenge. The net effect is that industry must accept any underpriced business, high risk drivers included – at a loss.

These rules have become a band-aid solution for more systemic issues that must be addressed. The solution lies in correcting the core issues as opposed to tightening the vise of the Take All Comers Rules.

Aviva recommends that the Take All Comers Rules be phased out in order to allow a more competitive market place to flourish. This would include removing/ revising the inflexible underwriting

rules that complicate the issue in the Insurance Act, *Ontario Regulation 664*, and include a more comprehensive review of the *Unfair or Deceptive Acts or Practices Act* (UDAP).

We also recommend broader reforms that will address the systemic challenges that should help restore the balance within the system. We encourage FSRA to embrace its mandate of principles-based regulation including stated goals of burden reduction, regulatory effectiveness, innovation, promote safety, fairness and choice.

This paper will outline the four key challenges of the rule and then we will provide recommendations at the end of this paper.

1. Take All Comers promotes industry rigidity – and was a barrier to industry response in the Covid-19 pandemic and state of emergency

As you are well aware, the *Unfair or Deceptive Acts or Practices Regulation* (UDAP) was a barrier to quick industry response in the Covid-19 pandemic. FSRA had to undergo emergency regulatory change to remove the prohibition of giving rebates for customers so that the industry could self-correct and/or extend relief to financially challenged customers as an act of good faith.

There are other examples with the UDAP of preventing insurers from offering additional gifts (i.e. dash cams) to customers, a regular practice of banks and telecom companies.

One of our recommendations, detailed later, is to conduct a more expansive review of UDAP to ensure that the rules are more in line with FSRA's modern mandate and an agile, competitive and innovative marketplace.

2. Take All Comers rules are unnecessary in a competitive market – companies can develop niche offerings to specialized segments with targeted offerings and rates

There are “non-standard” markets that excel at serving the high-risk automobile insurance market. These specialized insurers have the right eligibility, risk pricing algorithms and customer management abilities that ensure risk is not cross-subsidized by low-risk customers. Removing take all comers rules will encourage growth of the non-standard markets using premiums that are risk appropriate.

The industry provides a “market of last resort” through the Facility Association, to ensure mandatory automobile insurance is available, even for an automobile or driver declined by other markets.

Allowing flexibility in rate regulation will encourage competition in pricing and innovation in products and services for consumers. Providing choice and allowing market specialization will empower consumers to control their own costs through personal preference and personal circumstances.

Transitioning away from rules based to principles based regulation has been done successfully in jurisdictions such as the UK and jurisdictions within the United States. The UK, a principles-based regulatory scheme, does not have a Take All Comers Rule. New Jersey had a dysfunctional marketplace that was challenged with minimal choice, with remaining companies threatening to leave the state and with a large segment of uninsured drivers. During their large reform efforts to fix the insurance market, New Jersey phased out the Take All Comers rule over 5 years while closely watching the residual market. This was done by allowing more flexibility in underwriting guidelines, amongst other broader reforms.

3. Take All Comers promotes subsidizing the rates of high-risk drivers instead of rating based on personal risk and merit

Take All Comers rules are a barrier to sound business practices that protect our policyholders, distributors and staff. Insurers cannot avoid high-risk insurance that cannot be adequately priced, so the added costs are subsidized by the low-risk policyholders.

The underwriting restrictions under Section 238 of the Ontario Insurance Act require an insurer to have prior approval of any reason used to refuse insurance. Section 238 sets out that a reason to refuse insurance can be denied if, in the opinion of the regulator, the rule is subjective, arbitrary, bears little relationship to the risk to be borne by the insurer or is against public policy.

The result of this standard is that an insurer cannot refuse to provide insurance in situations such as these:

- When the policyholder has a history of fraudulent claims (suspected but no conviction)
- When the policyholder has a criminal history for fraud, violence, organized crime (conviction)
- When the policyholder is on international lists for money laundering or sanctions
- When the automobile is high-value but the financial profile of the customer does not explain the source of wealth to own such a vehicle

Insurers must file for approval for right to deny. It is not automatic right – and we are not always successful in getting approval.

In many other jurisdictions, insurers are allowed to decline policy issuance for any reason that does not violate public policy that is generally equated with the Human Rights Act. For example, in Nova Scotia, Regulation 8/2015 Adverse Contractual Action Regulation allows adverse contraction actions for any reason that does not violate public policy. The Underwriting Practices Regulation for Nova Scotia only prohibits an insurance company from denying a person insurance coverage on the grounds of:

- age,
- gender,
- marital status,
- age of vehicle (except antiques, etc.),
- previous coverage from Facility Association,
- a previous refusal of insurance coverage,
- previous not-at-fault accidents,
- making late payments (unless more than 30 days late, or the first in a series of monthly payments); and
- a lapse in auto insurance coverage less than 2 years long (unless it was because of a driver's licence suspension).

This is still too restrictive in our view, but it is a jurisdictional comparison within Canada that is still an improvement to Ontario.

Ontario's rules must be modernized to reflect the current realities of the financial services marketplace. There are many financial services industries that are allowed to qualify or disqualify potential customers because they have been assessed as too risky – such as banks, mortgage companies and credit-related services. To address the higher riskiness of these clients, institutions developed business models offering terms and conditions to meet this market – and they have priced for it, such as

offerings with a higher interest rate. This is an example of specialization and a company adjusting to the risk level.

4. Take All Comers Rule allows for bad behavior and may unintentionally support bad actors

Further to the point above, we do not have the power to decline or terminate a policy with someone we know or highly suspect has been involved in fraud. We have filed rules that allows us to refuse business with someone who has committed automobile fraud but we are not allowed to refuse those convicted of other crimes. This puts Aviva in potential situations to accept business from customers with a confirmed moral or legal risk in a binding contract.

These two examples present a legal, moral and financial predicament – insurers should be able to choose with whom we enter into a legally binding agreement with, especially one predicated on the notion of good faith.

Recommendations

Aviva makes the following recommendations to move FSRA towards principles-based supervision and a more modern marketplace:

1. FSRA develop a plan to address the systemic challenges and implement reforms that will address the core challenges within auto insurance

FSRA and stakeholders should work together to create a detailed plan to phase out the Take All Comers rules over a 5 year period. Phasing out over a 5 year period allows for the government to work on the fundamental challenges in the system itself and gives a reasonable amount of time for implementation and adjustment. The plan should include the ramp up of market conduct activity that will protect the consumer. It will also be critical to monitor the size of the residual market closely to make sure that the market is expanding for drivers.

2. Approve broader underwriting rules

Giving insurers broader underwriting rules will increase the competition in the market. This can be achieved by:

- Eliminating section 238 of the *Insurance Act* to remove the requirement for FSRA to approve insurer underwriting rules;
- Amending section 5 of *Ontario Regulation 664* to prohibit only underwriting factors that are unfairly discriminatory, such as race, creed, national origin, disability, income and education.
- Apply the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* when regulating insurer underwriting practices for auto insurance;

3. Conduct a review of UDAP with the intention of further modernization and improvements

There are a number of provisions within UDAP that run contrary to the flexible and innovative market and the mandate of FSRA. In addition, there are opportunities to add provisions and provincial offences, for example around fraud, to give more tools to FSRA and industry to protect consumers and

prohibit unfair and illegal behaviour in a more effective manner. As a first step, we recommend the review of the insurer section of the *Unfair or Deceptive Acts or Practices Regulation* and remove provisions that clash with FSRA's mandate and the fair treatment of customers' guidance.

4. Apply CCIR's Fair Treatment of Customers Guideline

The Fair Treatment of Customers guideline focuses on achieving good customer outcomes; ethical behavior, acting in good faith, prohibition of abusive practices. This market conduct approach gives more flexibility to specific behavior but declares these principles and outcomes be given ultimate priority in all policy and practice.

This approach helps keep our focus on outcomes – positive outcomes for customers - and should help us avoid the unintended consequences of specific rules.

5. Support Minister of Finance and Ontario government in broader reforms

The government has done considerable work with the industry on how to reform the system in ways to address fairness, choice and competition. Implementing change is key to underscore the success of the above-mentioned challenges.

Conclusion

Thank you for the opportunity to provide feedback on this very important matter. We are happy to provide additional information on this if it would be useful.

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