



CADRI

CANADIAN ASSOCIATION
OF DIRECT RELATIONSHIP
INSURERS

18 March 2021

Mr. Mark White, CEO,
Financial Services and Regulatory Authority (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON
M2N 6S6

Via: <https://www.fsrao.ca/engagement-and-consultations/fsras-first-proposed-insurance-rule-released-public-consultation-unfair-or-deceptive-acts-or-practices-udap-rule>

Dear Mr. White,

Re: Notice of Proposed Rule and Request for Comment [2020-018]: Unfair and Deceptive Acts or Practices (UDAP)

Introduction

The Canadian Association of Direct Relationship Insurers (CADRI) is the voice of insurance enterprises that offer automobile, home, and commercial insurance directly to Canadians. We advocate for flexible and evolving regulatory and legislative frameworks governing automobile, property, and commercial insurance to enable product and service innovation so that Canadians can easily choose insurance that serves their needs through the delivery channels of their choice.

We appreciate the opportunity to review FSRA's approach to the transformation of UDAP principles. CADRI has frequently cited the regulation as an impediment to customer service and innovation. Business, digital, and regulatory environments have evolved significantly since 2003 when the regulation was put in place.

CADRI supports FSRA's proposed two-stage approach:

- first by transforming the current UDAP regulation into a FSRA rule, and
- secondly by substantively reviewing its efficacy given other principle-based frameworks such as the Canadian Council of Insurance Regulators' (CCIR's) *Guidance Conduct of Insurance Business and Fair Treatment of Customers (Fair Treatment Guidance)* – which FSRA recently adopted.

Launching with a focus on shifting to principle-based provisions and removing barriers to innovation makes sense to CADRI's members. Principle-based and outcome-focused regulation encourages greater innovation, choice, and competition that benefits insurance consumers.

Pursuing innovative projects through a regulatory sandbox

CADRI believes that providing the FSRA CEO with discretionary and exemptive powers for flexibility and agile reaction to market conditions is a positive step. The process should be simple in design, quick in implementation and transparent in nature. We will be making comments to the Ontario Ministry of Finance to support this exemption in a separate process this month.

The proposed rule

1. Interpretation

1(3) “If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or legal representative of that person shall be deemed to have committed an unfair or deceptive act or practice ...”

We are concerned with the introduction of section 1(3), particularly with respect to expanding liability to employees and legal representatives. This expanded scope of liability is overly broad and transfers responsibility to those who may have limited control. Moreover, as directors and officers are already liable for UDAP contraventions under the *Insurance Act* (the *Act*), section 1(3) can be removed from the rule entirely.

1(1)(v) “‘Credit information’ means information about a person’s creditworthiness, including the person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from his or her occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,”

This process presented FSRA with an opportunity to modernize the definition of credit information. The definition remains broad, encompassing all information about a person’s creditworthiness – some of which is not collected by credit bureaus. We observe that in section 9, the prohibitions against the use of credit information are also wide-ranging, essentially prohibiting insurers from using credit information in any way that relates to auto insurance, except establishing payment options.

2. Unfair or Deceptive Act or practice

“2(1) For the purposes of the definition of ‘unfair or deceptive act or practice’ ... conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.”

We note that the definition of what constitutes a UDAP has been expanded to conduct that not only results in, but could reasonably be expected to result in, the prescribed outcomes, events or circumstances considered a UDAP.

This introduces the possibility that an insurer could be found to have committed a UDAP even though their conduct has not actually resulted in those listed in sections 3 – 10 of the rule. We do not support this proposed change. A new principle-based approach to UDAP, by definition, creates more variability in the requirements, and we caution that applying this hypothetical approach could further stifle innovation.

7. Incentives

“7(3) For the purpose of this section clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.”

CADRI notes that stakeholders have submitted questions to the FSRA seeking clarity about the parameters of rebates and incentives. CADRI encourages FSRA to keep open lines of communication so that common questions can be explored and FSRA can be transparent with its policy directions.

Should FSRA proceed and enable rebates and incentives, our members offer caution relative to expectations relative to: “... clear and transparent communication...” Clear customer communications can be impeded by weighty volume of information. We recommend that the expectation be that the potential amount of a rebate or incentive be made clear and indications are provided as to how the client could learn more if they are interested.

9. Prohibited Conduct in Auto Insurance Quotations, Applications or Renewals

9 (1) ...“ (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining insurance...”

CADRI members seek to allow customers to choose a preferred method of contact. In an omni-channel approach, there are certain unique circumstances where agent intervention is required to better understand the risk and/or provide additional communication. With the addition of section 9(1)(i) in the draft rule, it will be important for FSRA to implement a true principles-based approach, recognizing that certain variances in process are reasonable and necessary – and in the best interest of a client – and do not in and of themselves constitute a UDAP. This will be particularly necessary considering the changes that make not only the action, but the opportunity for an action a UDAP.

In addition, we are concerned that this section could be construed to hinder the application of sound information gathering and underwriting practices. It should also not prevent an insurer from prioritizing its service practices when operational capacity constraints make it necessary. Such situations have arisen in the past for direct insurers in periods of a hard market. As just one example, insurers should be able to give priority to their existing clients.

9 (1) ...“(ii) using credit information or a prohibited factor,”

Credit score is an indicator that is predictive of risk, and its use in other jurisdictions improves insurers' segmentation, allowing insurers to allocate costs more fairly through premiums that are commensurate with risk and therefore reduce rate subsidization.

CADRI is disappointed to learn that credit score as a rating factor is not being reconsidered at this time. Based on experience in other jurisdictions and with property insurance, CADRI members believe that allowing consumers to choose to have their credit score used, when acquiring or renewing auto insurance, leads to more accurate pricing.

The combination of an expansive definition 1(1)(v) and strict prohibition 9(1)(ii) could lead to some undesirable outcomes.

We urge FSRA to partner with Ontario's Ministry of Finance to review *Regulation 664*, which sets out prohibited factors for rating classification. A truly modernized framework would avoid duplication of existing rules or regulations. It seems logical to house the list of prohibited factors in one place. We believe that the list of prohibited factors should be reconfigured to a FSRA rule where, over time, it could be more easily adapted to changing circumstances, unlike the current situation with *Regulation 664*.

9 (1)...“(v) misclassifying a person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use,”

We agree with the intent of the proposed rule but would suggest that it be reworded as *intentionally (or knowingly) misclassifying a risk*. The proper classification of risks is heavily dependent on the information provided by the customer. Furthermore, it is impractical, if not impossible, for an insurer to keep up with the constantly changing circumstances of its individual clients and their impact on risk classification.

10. Affiliated insurers

“10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

“10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to the insured or potential insured, having regard to all of the circumstances, including but not limited to:

“(i) each insurer's declination grounds,

“(ii) each insurer's rates and risk classification systems,

“(iii) each insurer's method of distribution; or

“(iv) whether the insurers only recently became affiliated.”

CADRI believes it is important for insurers to be able to position and market affiliated companies and channels to specific customers. This is a means of ensuring that Ontarians can find insurance plans tailored their needs. In addition, CADRI submits that FSRA's proposed language may be varying from the intent of the existing regulation to the detriment of customer experience. Finally, flexibility for mergers and acquisitions continues to be essential in the property and casualty industry.

Ontarians accept that companies may have different brands under their corporate umbrellas. We have seen this work well in the mobile phone market where the larger players, Bell, Rogers and TELUS, each have mainstream and lower-priced brands and plans for younger and price-conscious customers. In this context, CADRI supports measures which allow corporations with affiliated companies to vary their pricing models based on distribution channels and market factors. By doing so, FSRA will put in place conditions which encourage experimentation and innovation.

The current provision provides for an exception where the means of distribution is separate and distinct. The rationale for the exception makes good sense, as it would be unreasonable or practically unrealistic for affiliates with multiple distribution means to offer the lowest premium amongst the affiliates. However, the strict application of the rule means that the two channels must always maintain very separate and distinct operations. The unfortunate reality for the customer is that a direct channel insurer that offers a standard auto insurance product is unable to offer the non-standard products of an affiliated channel insurer, unless the affiliates can also be distinguished based on declination grounds or rates and risk classification systems. This is difficult to attain or sustain from a true compliance perspective. Therefore, to be compliant, the best outcome for the customer is a referral. More specifically, the customer has to start from scratch with another agent of the affiliated non-standard insurer.

This scenario not only results in a poor customer experience but could also lead a customer to believe that an insurer is not complying with the Take-All-Comers rule, when in fact, the strict application of the UDAP Regulation prevents the insurer from providing a better experience for the customer.

It is not entirely clear that the redraft of this section benefits the customer.

Finally, with respect to affiliated insurers, we also believe that the regulatory approach should allow for significant flexibility following a merger or an acquisition. The newly-combined insurer should be able to maintain a different rate structure for the separate entities until such time as all the customers can be smoothly converted to the new rating system in order to minimize sudden and abrupt changes in individual premiums. This may entail a gradual conversion over a prolonged period.

We will continue to work with FSRA to understand the interpretation and implications of this section, and recommend further amendments be considered as part of second-phase review.

Implementation considerations

CADRI members submit that six months after the Minister's approval of the proposed rule would be a reasonable period to allow for insurers to review their practices and make any necessary adjustments. We also assume that an insurer could approach FSRA with a plan to comply with the new rule in a reasonable timeframe if they believe they can not be ready by the effective date.

Issues of redundancy

CADRI supports the regulator's stated intention to move to a second phase to review the content of the rule once established. Ultimately, in moving to principle- and outcome-based regulation, the specificity of the UDAP rule would be redundant. Such issues would be measured against the *Fair Treatment of Customers Guidance*.

Further considerations

CADRI has long advocated for customers having the option of allowing an insurer to integrate their credit score with other risk factors, as is the practice with property insurance. As we have stated above, we look forward to the implementation of the government's commitment in its 2019 budget and "*Putting Drivers First: A Blueprint for Ontario's Auto Insurance System*" when credit score will cease to be a prohibited factor.

Conclusion

As part of the transformation into a principles-based rule, we encourage FSRA to undertake continued consultation with the industry, amending the rule as necessary and issuing bulletins interpreting the rule as new opportunities and innovation are pursued.

We are committed to working with FSRA to modernize auto insurance regulation to promote consumer choice, remove barriers to regulation, and encourage healthy industry competition.

We would be pleased to discuss further with FSRA any of the topics we have cited here.

Yours truly,



Geoffrey Beechey
Chair and CEO
CADRI

cc:

Mr. Tim Bzowey, EVP, Auto/Insurance Products, FSRA

CADRI Board of Directors
CADRI Digital Task Force
CADRI Ontario Committee
CADRI Risk Classification Task Force