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Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
5160 Yonge Street, 16th Floor
Toronto, Ontario
M2N 6L9

RE: Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices

Aviva Canada appreciates the opportunity to comment on the Financial Services Regulatory Authority of Ontario's (FSRA) *Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices*.

We support FSRA's initiative of redrafting the current UDAP regulation into a principles-based rule. We appreciate that the journey of transforming automobile regulation in Ontario from a heavy rules-based system into a principles-based environment may be iterative and requires some staging. A transformational shift is ultimately required to deliver significant change in terms of innovation and competition for the industry. Significant effect will not occur until there is a change to the underlying substantive rules.

We did not include a response to question 2 (implementation) or 3 (redundancy) as we do not have specific concerns to share – our larger concern is to underscore the need for more substantive change in our collective journey of transformational change. There are many systemic and attitudinal changes that are required to bring to fruition a truly healthy, competitive marketplace that operates in the customer's best interest- and revising the UDAP alone is a narrow albeit necessary endeavor. Ramping up market conduct efforts in conjunction with working with the Minister of Finance to address fairness, innovation and competition is a crucial undertaking. Implementing change is key to underscore the success of true transformational change and ultimately the UDAP should become unnecessary and redundant if change is executed correctly.

We reviewed the draft changes through the lens of FSRA's stated objectives of: greater alignment with CCIR Treating Customers Fairly guidelines, clearer and more objective standards, removing barriers to innovation and reducing regulatory burden or redundant rules. Aviva agrees that these objectives are the highest priority in the evaluation of public policy and regulatory changes. The review presented below includes our comments aimed to give greater context or further improve the proposed changes – and highlights the objective that we think could be elevated to a higher standard.

Thank you, if you have any questions or require further clarification, please contact:

Aviva Canada Inc.

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Question 1: Are there any parts of the Proposed Rule that are too general or require further detail, including for the purposes of clarity or closing possible gaps?			
Section	Excerpt	Comment	FSRA Principles Challenged
Definitions	“ <i>Reasonable person</i> ” means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,	This is a higher standard than the common law standard, even higher than standard of care for a practicing medical doctor. “ <i>Best industry practices and full knowledge</i> ” should be removed	Clear and objective standard
1 (3)(ii)	<i>(ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.</i>	This section is redundant, we question whether this is needed, it seems to be covered in 1 (3)i	Reduce Reg Burden/Redundant
3	Non-Compliance with Law <i>3(1) The commission of any act prohibited under the Act, or under any regulation or rule made under the Act.</i> <i>3(2) Any provision of the Act, or a regulation or rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.</i> <i>3(3) Non-compliance with the requirements under the Act or a regulation or rule made under the Act, by the subject of an examination or purported examination.</i>	This definition should be narrowed. Section 3 makes any non-compliance with the <i>Insurance Act</i> a UDAP breach. This is very broad, and will capture common and routine/simple failures or elevates procedural missteps to the level of something akin to malicious conduct, which is a bit too broad a definition.	Clear and objective
9(4)	<i>iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk to be assumed by the insurer,</i>	This section should be revised to be more specific. As drafted, it is vague and difficult to comply with.	Clear and objective standards

Question 4: Are there any other issues or amendments to the Proposed Rule that FSRA should consider as it proceeds to its intended second stage of work in this area?

Section	Excerpt	Aviva Comment	FSRA Objective Challenged
9 (ii)	<p>Credit</p> <p>(ii) <i>using credit information or a prohibited factor,</i></p>	<p>The section is a good example of why the substantive changes are needed in underlying laws. Prohibition of credit is unnecessary and should be removed from the rule. The used of credit information must be voluntary and cannot be used to refuse insurance but is fair for rating with the consent of the consumer. It is unfair to consumers that they cannot get a premium discount for good credit. Ontario needs to modernize its view on the use of credit information for automobile insurance – there is benefit to customers to pay a lower premium, and customers are fully empowered to use this lever at their discretion or not. There is no material risk to the customer.</p>	<p>Remove barriers to innovation</p> <p>Reduce regulatory burden/redundant</p>
10(2)	<p>10 Affiliated Insurers <i>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.</i></p> <p><i>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</i></p>	<p>Subsection 10(1) should be clarified because the insurer cannot control the quotes that a broker or agent provide. If the intention of this provision is to have the insurer assume responsibility for the agent/broker action, this is an issue for us. The insurer cannot control the method of distribution used by a broker.</p> <p>What if the affiliated insurers offer different product sets through the same brokers – is it excluded? There should be exception for different legal entities that sell a specialty product where there are differences in product . For example, the insurer/broker should not have to offer the collector car program from Elite to consumers who are not collectors.</p> <p>We would like to be able to offer customers products that meet customer demands and/or are more targeted to them. For example, the collector car program.</p>	<p>Remove barriers to innovation</p>