

February 25, 2022

Financial Services Regulatory Authority (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON
M2N 6S6

Re: Consultation on Proposed Guidance for Reporting and Resolution of Automobile Insurance Rating and Underwriting Errors



On behalf of Desjardins General Insurance Group (DGIG), I am pleased to respond to your request for comment on the [Proposed Guidance for Reporting and Resolution of Automobile Insurance Rating and Underwriting Errors](#).

Desjardins is the leading cooperative financial group in Canada serving over 7 million members and clients across the country. For over 120 years, Desjardins has listened and responded to its members' needs and adapted to change. We provide Canadians with banking, wealth management, life & health insurance, property & casualty insurance, and personal, business, and institutional financial services.

There are approximately 6,000 Ontarians across the province serving their communities and representing the Desjardins brand. In Ontario, the Desjardins Ontario Credit Union (DOCU) is the second largest credit union in the province and the fastest growing credit union in the country. Desjardins General Insurance Group (DGIG) is a subsidiary of Desjardins Group and proud to be the leading personal use auto insurer in Ontario. Desjardins Financial Security (DFS) is the fifth largest Life and Health insurer in the country.

We are members of the Insurance Bureau of Canada (IBC) and Canadian Association of Direct Relationship Insurers (CADRI) and have contributed to and are in support of their detailed recommendations on this topic.

We appreciate FSRA's efforts to make Ontario auto insurance companies aware of FSRA's requirements when rating and underwriting errors occur by outlining:

- Expectations for proper notice and resolution of rating and underwriting errors for auto insurance consumers
- FSRA's supervisory approach, including examination of insurers and consequences of failure to comply
- New process to publish errors publicly on the FSRA website

Desjardins agrees that insurers are responsible for ensuring that they have appropriate controls in place to identify and correct rating and underwriting errors and to ensure the fair treatment of consumers.

We would like to share a few additional comments related to key elements of the proposed guidance.

Rationale and Background

We note the following aspect of the definition of an underwriting error:

An underwriting error also occurs when an insurer implements formal or informal processes and procedures, whether intentionally or unintentionally, that make it more difficult for consumers to interact with the insurer, its appointed broker(s) or its Agent(s) and thereby discourage or delay consumers from applying for, renewing, or otherwise obtaining automobile insurance.⁷

7 S. 238(1) of the Act currently prohibits an insurer from declining to issue, terminating or refusing to renew a contract or refusing to provide or continue a coverage or endorsement, except on a filed ground. S. 238(1) of the Act provides a sufficient legal basis for the inclusion of this portion of the underwriting error definition (the "UW Definition") into the Guidance, although the language of the UW Definition would also be expressly provided for in s. 9(1)(i) [2020-002] Unfair or Deceptive Acts or Practices (the "Proposed Rule"). The inclusion of s. 9(1)(i) of the Proposed Rule into the Guidance is subject to change and will only be included if the Minister of Finance (the "Minister") approves the Proposed Rule and the Proposed Rule comes into force.

The related footnote suggests that this component of the underwriting error definition is intended to focus upon current Take-All-Comers (TAC) expectations. We recommend that the definition be further refined to narrow the currently described scope which would appear to bring into play any delay or discouragement in responding to all existing and prospective clients such as those triggered by customer service challenges related to unexpected temporary system availability or staffing levels.

The determination of TAC errors is distinct from other underwriting errors which are typically objectively identified, and outcome focused. Self-reporting obligations are more appropriate for clear cut technical requirements, and not practices or processes that require interpretation of broad guidelines or principles. As such, we recommend that TAC related errors not be considered as underwriting errors in this context, while still being appropriately supervised outside of this guidance.

Reporting of Rating and Underwriting Errors

Reporting Thresholds

We are comfortable with the proposed thresholds for the reporting of major errors related to the number of clients impacted and the dollar amounts in relation to the insurer's total written premium. We assume that in situations such as with Desjardins, where we have multiple registered insurance companies (i.e., Certas Direct, Certas Home and Auto and The Personal insurance companies), that these reporting thresholds are intended to be applied at the individual insurance company level versus the overall business entity (i.e., Desjardins General Insurance Group) level.

Timelines and Reporting Mechanisms

In some cases, 25 business days from the time the rating and/or underwriting error is first identified will not be a sufficient given the complexity and scope of this kind of analysis.

We support the need for timely resolution. We propose as an alternative that within 25 business days from the completion of a full identification review, that the insurer must provide FSRA with its proposed action plan for error correction and remediation. This approach would ensure timely reporting and allow FSRA and the insurer much needed flexibility to appropriately respond to a wide range of potential circumstances.

We do not see sufficient value to consumers of adding regulatory burden on insurers to report minor errors on an annual basis to FSRA through the ARCTICS tool. Alternatively, all rating and underwriting errors should be documented within the insurer's annual compliance or risk management oversight report. The relevant sections of these internal reports could be reviewed by FSRA as part of any of its future risk-based supervisory reviews of insurers.

Potential for different insurer reporting thresholds

We suspect that the only purpose for allowing insurers to propose a different error reporting threshold to FSRA with an appropriate rationale and supporting data, relates to the potential publication of the error on the FSRA website. If so, we would caution against this opportunity as it may erode necessary consistency and confidence in any transparency process.

We caution against FSRA choosing a lower threshold for an insurer when it determines it is warranted. If FSRA believes that an insurer has historically shown a higher propensity for committing rating or underwriting errors or there are concerns about the effectiveness of the insurer's control environment as it relates to rating and underwriting errors, there are other regulatory actions that FSRA could take that strengthen monitoring or apply more severe penalties to the insurer. Differing reporting thresholds could complicate insurer performance comparisons and may cause threshold confusion in the sector.

Resolution of Errors

We recommend that FSRA recognizes that, in some cases, it will not be possible or reasonable to accurately calculate error impacts beyond a particular past time horizon.

In these cases, we recommend that FSRA approves insurer action plans that reasonably justify the correction time horizon proposed for the error correction.

Error timelines

We caution against establishing uniform correction or remediation timelines. In some cases, more time will be reasonably needed. As suggested earlier in our comments, we believe that the insurer should present to FSRA a proposed action plan for error correction and remediation. Within that action plan will be the details of the issue and any rationale for the length of time needed to promptly and accurately correct and remediate. With those facts in hand, FSRA can make a thoughtful decision on reasonable timelines that treat customers fairly and acknowledge the constraints faced by the insurer.

Publishing of errors

We do not feel that the proposed approach would significantly strengthen insurer accountability or consumer confidence in the P&C insurance industry.

Given that remediation plans for rating and underwriting errors must include a communication plan to notify all affected clients and given that the identification of errors may be evidence of the existence of an insurer's robust compliance controls, we believe that any public statements by FSRA related to reported errors should narrowly focus upon the public's interest in cases when the insurer:

1. Acted intentionally or with gross negligence resulting in FSRA applying significant administrative penalties or other regulatory actions
2. Can not identify or notify all current or past clients affected by the error
3. Historically has shown a higher propensity for committing rating or underwriting errors

Public disclosure of the error should only occur after the insurer reported the incident to FSRA, provided their correction and remediation plan and FSRA has notified the insurer of its satisfaction with the plan and has indicated to the insurer the expected date of public notice.

Supervisory Approach

We are comfortable with the supervisory approach outlined in the guidance.

Thank you for the opportunity to provide our commentary.

Sincerely,



Sam Palmerio
Manager, Government Relations
Desjardins Group