ONTARIO MUTUAL INSURANCE ASSOCIATION

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Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON
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RE: ***Proposed Rule 2024-003 Automobile Insurance- Fraud Reporting Service***

To Whom It May Concern:

We are responding on behalf of the members of the Ontario Mutuals Insurance Association.

Our Association represents provincially chartered farm mutual insurers from across the province. Our trading areas are primarily in rural Ontario. All our mutuals are 100% participating mutuals; there is no share capital and ownership of the mutual rests with the policyholders.

Each of our mutuals is over one hundred years old with the first of our mutuals being established in the 1850s. We have a long history of providing affordable insurance and ensuring availability to policyholders through both hard and soft market cycles.

Our primary products are farm insurance, home insurance, auto insurance, and small business insurance.

Fraud against automobile insurance companies has, for many years, been a significant cost to the automobile insurance industry and to drivers in Ontario. The insurance industry has taken the lead in identifying the root cause of fraud and has over the course of time provided estimates to quantify the economic impact of fraud on drivers.

This is not an easy task as fraud by its nature can be difficult to detect and define.

The insurance industry has requested significant assistance from the provincial government in combating fraud for many years. These requests have included requests for clearer laws, increased enforcement budgets and focus, and changes to the tort reform or legal system that would protect victims of fraud from becoming the defendant in bad faith cases or similar costly litigation.

In publishing the proposed Automobile Insurance – Fraud Reporting Service Rule and accompanying Guidance, FSRA has demonstrated an understanding that automobile insurance fraud can occur at various stages of the insurance policy cycle. Identifying five broad categories: underwriting, claims fraud, providing fraudulent services, sales, and internal fraud is a positive step in providing some definition and specifics to a broad topic.

As related however, to the benefit of a long-term fraud prevention and reduction strategy we believe that a narrower focus on fraud perpetrated through fraudulent claims and fraud perpetrated by service providers. During the initiation phase of the Fraud Reporting Service this narrower focus would allow both insurers and the regulator to more easily work out the inevitable adjustments and adaptions needed to make the fraud reporting service efficient and cost effective. Each of the areas we have identified have been well explored and researched and should be well understood by those tasked with mandatory reporting.

The proposed rule places onerous and stringent requirements on insurers who are the victims of fraud. These requirements will create an additional cost to insurers, primarily because there will be a strict onus on reporting that will require additional resources, administration, programming, and analysis to ensure compliance with the rule. This is not to say that insurers do not already have processes and decision making in place on fraud detection and prevention, but this additional reporting will be above anything already in place. In addition, insurers will bear the cost of the creation and implementation of the Fraud Reporting Service through regulatory fee assessments. In phase one, the Fraud Reporting Service will be a net cost to insurers and drivers. We acknowledge that the Guidance references a “phase two” which would provide individual insurers with a potential benefit, but greater detail and certainty on the benefits and utility arising from phase two is needed.

The cost involved with fraud reporting will not be a one-time cost, but any potential event reported will take on the requirement of longer-term monitoring and maintenance and this could go on for a considerable number of quarters. As it is expected that the Fraud Reporting Service will be a permanent feature of the automobile insurance regulatory landscape, we urge that subsequent phases that provide effective detection, enforcement, and fraud reduction be addressed sooner than later.

While the guidance provides an interpretation as to "reasonable grounds to believe", compliance by insurers will still require a complex assessment and analysis. The commentary provided is helpful, but we believe that continued guidance, examples, and regulator led orientation may be necessary to ensure the reporting service database does not become “cluttered” with “events” that should fall below the reporting threshold. We favour a relatively high threshold that will create a credible source of data as opposed to speculative assessments of fraud. We believe the guidance sets that tone and continued reinforcement, as noted above, will assist in creating a common understanding on the reporting threshold. In considering how a constructive approach can be maintained we urge that an insurer’s overall reporting compliance, should it become subject of a FSRA review or assessment, be undertaken in a manner that fosters continued improvement.

We have concerns that in reporting fraudulent events under this rule, insurers may be exposed to disclosure requirements or bad faith claims if litigation arises. While the rule speaks to minimizing the submission of “personal information’ and “de-identifying” personal information, we do not believe that it provides an adequate litigation shield or safe haven for the reporting insurer. While any claims arising may be defendable, that defense may still be more expensive than having a statutory shield for an insurer complying with reporting obligations under the rule. This may be beyond the scope of regulatory authority, but it is a point that should be considered.

Similarly, we believe that insurers faced with claims under privacy legislation should have effective immunity.

In conclusion, we recognize that the proposed Automobile Insurance - Fraud Reporting Service is put forward as part of a larger plan to reduce automobile insurance fraud. It does, however, create additional cost to insurers and drivers for the cost of developing the system and for the internal costs of each insurer in meeting the mandatory requirements set out. In considering the timing and implementation of this system we also urge FSRA to consider the potential costs and capacity issues that will arise in the automobile insurance sector if the proposed major changes to the Statutory Accident Benefit Schedule, currently out for consultation through the Ministry of Finance, are introduced.

We strongly recommend that FSRA, in conjunction with the Ministry of Finance and other applicable ministries, pursue a holistic approach that considers tort and Statutory Accident Benefits Schedule reforms that will support fraud prevention and enforcement gaps in key areas that have already been identified over the course of previous consultations.

Thank you for the opportunity to provide our comments.

Yours truly,

JL C Taylor

John L. Taylor BBA, FCIP, FCLA, CHRL
President