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October 15, 2024

FSRA
25 Sheppard Avenue West, Suite 100
Toronto, ON
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Re: FSRA Fraud Reporting Service Consultation
ID: 2024-008

Dear Sir/ Madam,

Thank you for the opportunity to comment on FSRA's draft Fraud Reporting Service (FRS) Rule and Guidance. Aviva has long waged a war against fraud. We have invested significantly in expertise, building out a dedicated fraud team. We have invested in data analytics both internally and jointly with the industry. We were founding members of both CANATICS and Équité. We have aggressively pursued fraudsters through criminal courts, civil courts and administrative tribunals. We have shone a spotlight on the issue through media. We have advocated for change and called on our regulators and governments to be more active partners in this fight. We are pleased to see FSRA's focus on fraud.

We are broadly supportive of FSRA's Fraud and Abuse Strategy. However, the overarching objective of any Fraud and Abuse Strategy must be the **reduction of fraud**. Surprisingly, this objective does not appear in the proposed Rule and Guidance. It is not clear how the proposed Rule and Guidance will contribute to the reduction of fraud. There may be an indirect impact, but we urge FSRA to take a closer look and add more focus on the prevention and mitigation of fraud.

FSRA's draft Guidance and Rule will create an FRS that will require insurers to report information to FSRA. The purpose for collecting information is "to support FSRA's effective assessment and detection of automobile insurance fraud in Ontario". The FRS project is divided into two phases. The FRS Rule and Guidance represent the first phase of development and have the following key outcomes:

- Quantifying the prevalence of automobile insurance fraud in Ontario
- Creating a baseline for fraud detection, and
- Identifying fraud trends throughout the automobile insurance industry.

Phase 2 is much less defined even although the proposed Rule and Guidance seem to be written in anticipation of Phase 2. FSRA has indicated that in Phase 2, insurers will be able to access the information collected in Phase 1 and use that information to detect fraud, but no details have been provided. We also note that Phase 2 has not been approved by the Ministry of Finance so now, what is proposed is largely a reporting exercise that will not directly benefit insurers' efforts to reduce fraud.

Aviva is supportive of a strategy to assess and detect fraud. However, as explained below, we do not support the approach proposed in the Guidance. Phase 2 needs to be better defined before insurers are reqired to submit case level data. Collection and submission of data is a complex and expensive undertaking. This project will require investment from both FSRA and insurers. Many insurers, including Aviva, already share data with Équité. An understanding of how Équité fits into FSRA's strategy is necessary to avoid duplication. More work is needed to properly scope out Phase 2. In the meantime, the proposed Rule and Guidance should be revised.

Revise the Guidance and Rule to focus solely on Phase 1

Phase 1 and Phase 2 should be more clearly delineated. The proposed Guidance and Rule should focus solely on Phase 1. Phase 1 objectives/ outcomes should be limited to quantifying fraud and identifying fraud trends. Fraud detection, including the establishment of a baseline for fraud detection, should be a Phase 2 objective.

For Phase 1, the collection of data should be limited to counts of cases. This is all that is required to quantify the amount of fraud in the system and identify trends. We would be pleased to provide further input and recommendations. The Rule and Guidance should be revised accordingly.

A Separate Guidance should be issued for Phase 2

Phase 2 should be addressed in a separate Guidance once there is approval from the Ministry of Finance to proceed. The following issues need to be addressed as part of Phase 2.

- Objectives should be clearly set out. Phase 2 objective should be broader than enabling FSRA to detect fraud. What is FSRA going to do with the detected fraud? At a minimum, any data that is reported should be shared amongst insurers so that they can detect fraud and take appropriate action.

- The prescribed data to be submitted should be reviewed against the objectives/ purpose/ uses to ensure alignment.

- The purpose and uses of the prescribed data should be clearly articulated. The ability to share the data with insurers should be expressly stated. Confidentiality provisions should be included.

- Privacy issues must be addressed if personal information is to be collected and shared with other insurers.

- Limited liability protection will be required for insurers to report, share and act upon fraud information. This is particularly important if the threshold for reporting is anything other than proven fraud.

- Protection of FRS data from Freedom of Information (FOI) requests is reqired to ensure that fraudsters are not able to access this information.

- FSRA will need to communicate its Data Retention policy that sets out how long the information will be retained.

- Data structure and implementation timelines need to be reviewed. The data collection may create additional work for insurers depending on the format. Implementation timelines need to be established after consultation with industry.

Until these issues are addressed, insurers should not be required to collect and submit case level data. Collection and integration of data from different sources is a complex and expensive task. We strongly recommend that FSRA establish an insurer working group to provide advice. At a minimum, there needs to be a common understanding of what data is currently collected, its format, the ease of transmitting data and the timelines for any system changes that may be necessary.

Clarify the Role of Équité in FSRA's Strategy

Aviva is a member of Équité and already submitting data to Équité. Aviva would like to better understand the role that Équité will play in FSRA's FRS. Aviva incurs a significant cost for its membership in Équité. There is high potential for duplication between Équité and the FSRA FRS. Aviva asks that FSRA avoid duplication, use Équité as the vehicle for data collection and reporting and use FSRA's regulatory powers to enhance the effectiveness of Équité.

Increase the Focus on Fraud Reduction

The purpose of FSRA's Fraud and Abuse Strategy must be the reduction of fraud. The Rule and Guidance do not contribute enough to the reduction of fraud. Reporting alone does not reduce fraud. Concurrent with efforts to quantify fraud must be a focus on prevention and mitigation. Insurers require more tools to deal with fraud. We ask that FSRA and the Ministry of Finance consider the following:

- The creation of a suspicious provider list by FSRA that would be based on collated information from individual insurers. The lists should be shared with insurers.

- Amending the SABS to allow insurers to de-list or stop doing business with fraudulent or abusive health care providers.

- The ability to decline coverage for fraud risk when there are reasonable grounds or the applicant has a history of fraud, aligning with similar provisions, such as Alberta's *Adverse Contractual Action Regulation* and the federal *Bank Act*.

- Amending the SABS so that a claimant who commits fraud in relation to a single benefit forfeits their entire claim. Currently, insurers can only deny the benefit in which fraud has been committed.

- Expanding FSRA's capacity to investigate and prosecute fraud. FSRA should have special constable status so it can lay charges under the Provincial Offences Act.

- Better information sharing and co-ordination between various regulators including FSRA, health care colleges and the Towing Directorate.

The Proposed Rule and Guidance

While we do not recommend proceeding with the Rule and Guidance in its current form, we offer the following comments for FSRA's consideration:

Fraud Event

Aviva recommends that the definition of "Fraud Event" be revised to align with the definition of civil fraud. The definition should also be expanded to include types of fraud besides those enumerated. Our recommended amendments are underlined:

> *"'fraud event' means a deceptive act or omission, or series of deceptive acts or omissions committed with some level of knowledge or recklessness by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes but is not limited to instances of:*
>
> *I. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;*
> *II. Obtaining a benefit under a contract of insurance through fraudulent claims;*
> *III. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;*
> *IV. Fraudulent activity in the selling or distribution of insurance products; and*
> *V. Fraudulent activity committed by internal employees of an insurer."*

Prescribed Information to be Reported

The requirement to report data/ information is set out in several sections and is confusing and at times, contradictory. The provisions in the Rule and Guidance need to be simplified and made more consistent.

- The case level data to be provided should be narrowed in scope. The Rule and Guidance both require insurers to provide all information. This term is too broad and ambiguous and may be interpreted to require documents, videos, and materials that are subject to privilege. The prescribed information should be narrowed to data elements similar to those set out in Appendix B to the Guidance. We further recommend that the reqired data elements should be tailored for each specific type of fraud.

- The provisions regarding de-identifying information are ambiguous and need to be clarified.

- Rule 3(1) requirement to report information related to events that are "likely to occur" is ambiguous and may capture speculative information. The phrase should be removed.

- Rule 3(2) requirement to report after an insurer has "taken action" is also ambiguous. Clearer triggers for reporting should be established.

Data Elements

Appendix B of the Guidance sets out the data elements to be reported. The list is non-exhaustive. It should be exhaustive. As previously recommended, mandatory data elements should be established for each type of fraud. We repeat our recommendation that FSRA establish a working group of insurers to work through the data elements.

Reporting Trigger

The trigger for reporting is reasonable grounds to believe ("RGB") that a fraud event has occurred or is likely to occur. The Guidance clarifies that RGB falls between suspicion and conclusion of fraud. However, the Guidance also says RGB "include evidence, verified facts, context, or indicators that support a high degree of certainty that a fraud event has occurred or is likely to occur, warranting further action by the insurer but not allowing the insurer to conclude that a fraud event has occurred." A more precise definition of RBG is needed to ensure compliance. Consideration should be given to using an existing standard such as "balance of probabilities".

Thank you for the opportunity to provide feedback. Aviva is committed to partnering with FSRA and the Government in the fight against fraud. We would be pleased to discuss further.

Yours very truly,
AVIVA CANADA INC.
Karin Ots
Senior Vice-President, Regulatory and Government Relations