



**CANADIAN ASSOCIATION OF
INSURANCE RECIPROCALLS**

January 27, 2025

[submitted via FSRA website]

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

RE:

Identifier: No. PC0055APP: Proposed Guidance: Own Risk and Solvency Assessment (ORSA) Ontario-incorporated Insurance Companies and Reciprocal Insurance Exchanges (the “Proposed Framework”)

We are pleased to provide the Financial Services Regulatory Authority of Ontario (“FSRA”) with our comments in connection with the above-noted Proposed Framework.

CAIR and General Commentary on Reciprocal and Regulatory Oversight

The Canadian Association of Insurance Reciprocal (“CAIR”) is an industry association for Canada’s insurance reciprocal. CAIR is providing comments on behalf of its Ontario members, which include reciprocal who have members including municipal governments, hospitals, educational institutions, regulated poultry producers, and local electrical distribution companies.

We ask FSRA to review our previous submissions where CAIR has demonstrated that reciprocal, legislatively and by their very nature, do not require and would be overly burdened by the proposed regulatory approach that is applicable to other licensees. We also ask that you direct your attention to the concerns about the regulatory burden, administrative cost and reduced flexibility associated with the recently issued Proposed Framework. Reciprocal are and were intended to be treated differently from other insurers. The Insurance Act (the “Act”) provides a mechanism for businesses and governmental bodies to come together to create vehicles for insurance in situations where commercial insurance may not readily exist or where it is not otherwise available on a commercially viable basis. Given the unique status of reciprocal under the Act, it continues to be CAIR’s assertion that the Proposed Framework as well as FSRA’s previously issued Guidance is not applicable to reciprocal. While CAIR Ontario members appreciate FSRA’s objectives in relation to effective risk management, we would ask that this information be considered again in your deliberations on the Proposed Framework.

Reciprocal Exchanges Background & Commentary Related to the Guidance

As defined in the Act, a reciprocal insurance exchange (“reciprocal exchange”) is a group of subscribers exchanging reciprocal contracts of indemnity or insurance with each other through the same attorney. Subscribers are the persons exchanging with each other reciprocal contracts of indemnity or insurance as provided in section 378 of the Act. In general, Section 283 of the Corporations Act (Ontario) is not applicable to reciprocals.

Due to their nature, reciprocal exchanges are not-for-profits. Reciprocal exchanges are often created in sectors where traditional insurance has not met the needs of an industry from a cost and/or coverage perspective. Reciprocal exchanges permit subscribers to mutually protect themselves with appropriate coverage in a more cost-efficient manner than they can with traditional insurance, with each subscriber contributing its share of claims and operational costs. Importantly, reciprocal exchanges may undertake insurance only on behalf of their subscribers.

Currently, reciprocal exchanges are designed to maintain premium stability and to be able to return excess surplus to subscribers. These insurance savings benefit the subscribers and the taxpayers of the province in the long run (as indicated, reciprocal exchanges are often hospitals, municipalities, universities, regulated poultry producers, local utility companies and school boards). To the extent the Proposed Framework increases costs to the reciprocal exchange, it will reduce the ability of the reciprocal exchange to maintain premium stability and to return excess surplus to subscribers.

Reciprocal exchanges are regulated separately under the Act to recognize their unique structure and Member risk profile (e.g., self-contained, no risk to individual consumers, specialized demographic).

While reciprocal exchanges were identified in the Proposed Framework, we are concerned that the Proposed Framework does not recognize their unique features. For example, the fact that reciprocal exchanges are not subject to the MCT Guideline is stated in footnote form only.

As reciprocal exchanges, we are fully committed to strong, modern governance, risk resilience and capital management practices. Historically, regulators have recognized the unique aspects of reciprocal exchanges. Specific acknowledgement of the differences of reciprocal exchanges and modifications to address these differences within the Proposed Framework should be documented.

Need for Continued Consultation

In our experience, the concept of reciprocal exchanges is not well understood. The Proposed Framework does not properly apply to reciprocal exchanges and as we have suggested previously, we ask for direct consultation with FSRA. In this way, FSRA will have enhanced understanding of the operational and other challenges inherent with the Proposed Framework, but it may be possible to collaboratively develop a way to create a framework in connection with reciprocal exchanges that would be meaningful.

In the event that FSRA is considering amending the Proposed Framework to include differing expectations of reciprocal exchanges, we have set out below some of our high-level concerns and/or feedback. Given the interaction between various sections of the Proposed Framework and anticipating that you may need to separate the commentary, we have, in some instances, repeated our comments.

Own Risk and Solvency Assessment (ORSA) Requirements

The Proposed Framework lays out common expectations for an organization's ORSA process. However, given the limited risk profile, strict governance under a subscribers' agreement and capital protections (e.g., retro-assessment) associated with reciprocal exchanges, we would comment that these attributes should be taken into account when applying the principles outlined in the Proposed Framework. While it is our continued view that the Proposed Framework does not apply and does not need to be applied to reciprocal exchanges, we ask that you consider the fact that reciprocals cover specific areas of risk (including capital requirements) which are better assessed and managed through the processes developed by those reciprocals who have the required specialized expertise to do so. The Proposed Framework could acknowledge such existing frameworks as factors for the reciprocal exchange to consider when it is determining whether an ORSA is indicated in their instance. While some reciprocal exchanges may decide that an ORSA is indicated in some situations, these and the frequency with which they are undertaken should remain voluntary and in the discretion of the reciprocal exchange.

Principle 1: Governance and oversight

Existing risk management practices are aligned with the size and the structure of the reciprocal exchange. Given the size and resource constraints of most, if not all reciprocal exchanges, some of the proposed responsibilities would not be practical as they would be a duplication of efforts. We would expect that proportionality would be applied given a reciprocal exchange's inherently smaller resource base and risk profile. Proportionality has been put forth by FSRA as an appropriate lens to determine expectations of Board and management and we ask it be reflected in this principle.

Principle 2: Comprehensive identification and assessment of risks

Overall, we maintain that the ORSA is not applicable to reciprocal exchanges in the current state. However, if expected, similar to our comments in Principle 1, we expect that proportionality will be taken into account when assessing a reciprocal exchange's ERM process given the structure and risk profile.

Principle 3: Relating risk to capital

Capital expectations for reciprocal exchanges are separately laid out within the Insurance Act and related Regulations. The reason for this is that reciprocal exchanges support a common subscriber demographic and have the ability to request a retro-assessment if large capital needs

arise. Therefore, these detailed capital management requirements are not applicable to the reciprocal industry, including the FSRA MCT Guideline.

Notwithstanding the above, below are concerns within this Principle:

- Outlined in item V: Internal targets *“FSRA understands that an Insurer’s Capital Resource levels may fall below its Internal Target on unusual and infrequent occasions. If this happens or is anticipated to happen within two years, the insurer informs FSRA promptly”*. Given the size and resource constraints of a reciprocal exchange, it would not be practical for most reciprocal exchanges to monitor Capital Resource levels in real time or to anticipate potential shortfalls within a forward-looking two-year timeframe.
- The above concern would also apply to item VI: Use of stress and scenario testing. The level, volume and frequency of testing outlined is not reasonable for a reciprocal exchange structure.

Principle 4: Monitoring and reporting

Overall, we maintain that the ORSA is not applicable to reciprocal exchanges. Furthermore, the expectation outlined that *“An effective ORSA is clearly and formally documented in an ORSA report at least annually and more often if circumstances warrant”*, is not practical for the above stated reasons.

Moreover, other provincial regulators require stress testing to be completed once in three years. Further clarification is needed to understand why FSRA thinks a different cadence is preferred.

Principle 5: Internal controls and objective review

A strong internal control environment is important and one that reciprocals implement in an efficient and effective manner based on their organizational structure and processes. With respect to the ORSA objective review outlined *“The ORSA, including the ORSA report, is subject to periodic objective reviews. The objective review may be conducted by:*

- *an internal or external auditor;*
- *a skilled and experienced internal or external resource, or;*
- *an appropriately skilled and experienced individual,*

who reports directly to, or is a member of the Board.”

On top of our assertion that the ORSA is not applicable, it is unclear what the cadence of these periodic objective reviews would be and whether this is mandatory or voluntary requirement. It would put unnecessary pressure on the existing resources or/and require the incurring of additional costs to sourcing an experienced individual externally or retain a professional consulting firm to carry out such objective reviews.

As stated above, reciprocal exchanges are designed to maintain premium stability and to be able to return excess surplus to subscribers. These insurance savings benefit the subscribers and the taxpayers of the province in the long run. While there are benefits to insurance entities in applying

the Proposed Framework, due to the nature of reciprocal exchanges there are already existing risk management practices achieving the same result. Therefore, adopting this Proposed Framework in the current state will result in the duplication of effort and increased cost which would inevitably be passed on to the subscribers.

The proposed principle also references the concept of proportionality. If applied to reciprocal exchanges, any supervisory framework should make it clear that benchmarks used in the context of reciprocal exchanges are different than those used for other types of insurers and take into account the nature and built-in protections of reciprocal exchanges – including that reciprocal exchange members, which are also the policyholders and subscribers of the reciprocal exchange, are represented in the form of an advisory board that oversees the underwriting practices and other operations of the reciprocal exchange.

Need for continued consultation

This letter has touched on several areas we feel warrant a deeper review, but most importantly, stresses the fact that this is another case in which FSRA guidance should not apply to reciprocal exchanges given that their capital expectations are detailed in the legislation. We thank you for the opportunity to provide this feedback and would ask that you please contact me if you have any questions via email at craig@rmainsurance.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Pettigrew', with a stylized, flowing script.

Craig Pettigrew

Chair