



Take-All-Comers Thematic Review Report

August 2023

Table of Contents

Executive Summary	3
Part One: Setting the Stages	4
1. What is Take-All-Comers?	4
2. Launch of the New Regulator.....	8
Part Two: Early Supervision Findings	10
1. Identification of Contraventions	10
2. Co-operation with Registered Insurance Brokers of Ontario (RIBO)	11
3. Active Supervision.....	12
4. Preliminary Detailed Observations	13
Part Three: Setting Clear Expectations	14
1. FSRA Guidance Confirms Legal Obligations to Consumers	14
Part Four: Active Reporting and Supervision	16
1. Requirement to Review and Report to FSRA on Insurer Practices	16
2. Insurer and Intermediary Risk Assessment.....	17
3. Results of Insurers' Self-Reviews.....	19
4. Supervision Findings: Systemic Non-Compliance	21
Part Five: Conclusion and Next Steps	22
1. Enforcement.....	22
2. Next Steps – What This Means for the Auto Insurance Sector Going Forward.....	24
3. Conclusion	25
Appendices	28
Appendix I: Glossary of Key Terms.....	29
Appendix II: “Dear CEO” Letters	31
Appendix III: Take-All-Comers Thematic Review Timeline	40
Appendix IV: Standard Form of Undertaking	41
Appendix V: Unfiled Underwriting Rules and System Messages	43
Appendix VI: Self-Reported Non-Compliant Practices	45

Executive Summary

Auto insurance is compulsory for Ontario's more than 10 million drivers, which makes it important that all consumers have fair access to insurance. Ontario's law has a "Take-All-Comers" requirement that protects consumers' ability to purchase auto insurance.¹ Take-All-Comers means insurers are obligated by law to accept business from all consumers who meet their FSRA-approved underwriting rules.

Early in our mandate as the new regulator, the Financial Services Regulatory Authority of Ontario (FSRA) became aware of certain business practices being used which appeared to contravene Take-All-Comers. FSRA undertook a review of Take-All-Comers, which confirmed that there was intentional non-compliance industry-wide. Instead of filing new underwriting rules for approval by FSRA, insurers chose to engage in non-transparent and illegal practices that made it more difficult for certain types of consumers to get auto insurance quotes. This systemic non-compliance led to consumer harms, unfair competition, and diminished market health. FSRA responded by taking action to restore compliance and consumer trust in the system.

FSRA undertook a multi-phased policy and supervisory approach to address non-compliance across the market. Our approach included:

- Direct engagement with insurance executives to discuss regulatory expectations and Take-All-Comers requirements
- Conducting interviews with brokerages, insurance brokers, and insurance agents, as well as with insurer representatives
- Supervisory activities
- Issuing Take-All-Comers Guidance

¹ The main parts of the Take-All-Comers requirement are derived from sections 237 and 238 of the [Insurance Act](#), and reflected by the sanctions in the [Unfair or Deceptive Acts or Practices Rule \(UDAP\)](#), which requires an insurer to file with FSRA the rules it will use to decline to issue, terminate, or refuse to continue coverage for auto insurance. This means that filed and approved underwriting rules are the only criteria that should be considered when deciding eligibility for an auto insurance policy. This requirement applies regardless of the channel that connects the consumer with the insurer or if the coverage relates to a new applicant or an existing policyholder. The UDAP Rule was amended June 1, 2023. The [former UDAP Rule](#) was effective April 1, 2022 – May 31, 2023.

- Issuing the Unfair or Deceptive Acts or Practices (UDAP) Rule
- Active reporting and supervision
- FSRA also identified 1 insurer for enforcement action and continues to monitor the market to determine if there are others

FSRA is mandated to protect the rights of consumers by promoting high standards of business conduct and transparency within the financial services we regulate. This report describes the outcomes of FSRA's Take-All-Comers compliance review, which will help us strengthen consumer protection related to auto insurance by ensuring availability, enhancing regulatory oversight, and achieving better market health.

Part One: Setting the Stage

FSRA is an independent financial services regulatory agency created to, among other things, improve consumer protection in Ontario. FSRA promotes high standards of business conduct by regulating the financial services sectors, including auto insurance. FSRA supervises compliance in the auto insurance sector, including holding insurers accountable for complying with the Take-All-Comers requirement.

1. What is Take-All-Comers?

A. Business Conduct that Results in Consumer Harm

The Take-All-Comers requirement is intended to ensure fair and timely access to private passenger auto insurance. It means that insurers and their intermediaries must:

- Offer their customer a renewal before an insurance policy expires, if that customer continues to meet that insurer's eligibility rules; and

- Accept all private passenger auto insurance business from consumers that meet the insurer's FSRA-approved underwriting rules (a delay in providing a quote is effectively declining coverage).²

The requirement does not mean that an insurer must insure all consumers seeking an auto insurance quote. Rather, insurers may only decline, refuse to renew, or terminate insurance coverage based on underwriting rules the insurer files with and which are approved by FSRA. Once FSRA has approved an insurer's underwriting rules, that insurer is then legally required to strictly adhere to their approved rules.

Insurers and intermediaries (brokers and agents) also have an obligation to offer an insurer's lowest rate available for each consumer's circumstances when consumers shop for auto insurance.³

Contraventions of the Take-All-Comers requirement lead to negative consumer and market impacts, including:

- **Higher Premium Cost** – Consumers viewed as “higher” or “low-quality” risk were unable to get a quote and/or coverage from the insurer with the lowest premium, despite being eligible based on that insurer's filed and approved underwriting rules.
- **Unfavourable Discretion** – Insurers used unfiled underwriting rules to suspend an intermediary's binding authority,⁴ and the automated quoting and underwriting process was replaced with manual underwriting resulting in:
 - Increased processing time (delays), from minutes to days/weeks in some cases, which can deter intermediaries and consumers, particularly when a consumer needs immediate coverage.

² If an insurer has a ground(s) filed with and approved by FSRA that allows it not to give a quote to a consumer, that insurer should still promptly notify the consumer of its decision.

³ This requirement is set out in section 10 of FSRA's Unfair or Deceptive Acts or Practices (UDAP) Rule.

⁴ “Binding” refers to the underwriting authority an insurer grants to a broker or agent, to commit the insurer to a new policy without prior approval from the underwriting department.

- Additional scrutiny and discretion through the manual underwriting process, leading to a more rigorous assessment and higher likelihood of refusal.
- Misapplying ‘fraud flag’ indicators to deny certain consumers access to coverage, which creates challenges for those consumers who decided not to complete the manual underwriting process to obtain quotes from that insurer in the future.
- **Unfair Competition** – Take-All-Comers contraventions also led insurers to steer ‘riskier’ consumers away from themselves and toward other insurers. This undermines fair competition, creating an unlevel playing field in the market.
- **Less Choice** – Take-All-Comers contraventions meant consumers had less choice in insurance providers because they were unable to obtain policies, despite their eligibility under insurers’ filed and approved underwriting rules.
- **Wasted Time** – Consumers’ time was wasted because insurance coverage was made more difficult to find.

It is not possible to accurately quantify exactly how many consumers have been affected by Take-All-Comers non-compliance⁵, or the financial costs of Take-All-Comers contraventions. However, non-compliance means that consumers are not being treated fairly or in a transparent manner, which erodes confidence and trust in the auto insurance system more broadly.

⁵ The number of qualified drivers refused a quote and/or coverage from the insurer with the lowest premium is unknown. Insurers and intermediaries do not have adequate tracking mechanisms and drivers would obtain coverage elsewhere, not knowing about potential non-compliant tactics.

B. Key Players

Consumers turn to multiple sources to get quotes, and all of these sources play a role with Take-All-Comers.

- **Insurer:** A licensed company which undertakes, agrees, or offers to undertake a contract of insurance.
- **Broker:** A licensed person or corporation who, for compensation or value, deals directly with the public and: acts or aids in soliciting, negotiating, or procuring insurance contracts, whether or not that person has agreements with insurers to do so; provides risk management services and claims assistance; provides insurance counselling or advice; or holds themselves out as an insurance consultant. Brokers are licensed and regulated by the Registered Insurance Brokers of Ontario (RIBO).
- **Agent:** A licensed person, excluding a broker, appointed to act on behalf of an insurer for the purpose of negotiating and/or soliciting insurance. An agent is an employee or independent representative of one single insurer. Agents are licensed and regulated by FSRA.
- **Aggregator:** A third-party that contracts with an insurer and/or broker to provide auto insurance quotes on behalf of insurers. For example, an aggregator may collect consumers' underwriting information online and use that information to offer sales leads to insurers and brokers. Aggregators are not currently licensed nor regulated by FSRA. However, FSRA has the ability to require any person, including aggregators, to be licensed if they conduct regulated insurance activities – such as acting on behalf of insurers to solicit, provide quotes or offer insurance in Ontario. We are currently reviewing whether aggregators require licenses to conduct their business and if they should be otherwise regulated.⁶

⁶ FSRA is considering what supervisory framework would be best suited for aggregators and other unlicensed third parties that participate in the distribution of auto insurance in Ontario.

Each of these participants are discussed in the sections that follow. A glossary of key terms can be found at [Appendix I](#).

2. Launch of the New Regulator

Addressing allegations of Take-All-Comers non-compliance was one of FSRA's early priorities. We initiated work on the Take-All-Comers requirement in the Ontario auto insurance sector as part of our 2019-22 inaugural Annual Business Plan. Preliminary findings gathered in 2020 and 2021 led us to undertake a broad thematic review⁷ – which included public consultations, insurer examinations, and a regulatory self-assessment – to better understand and effectively respond to what we learned.

A. Identification and Engagement

FSRA became aware of a number of common practices used in the market which could result in contraventions of the Take-All-Comers requirement, including practices that made it more difficult for certain types of consumers to get auto insurance quotes, such as those who:

- Experienced a prior accident benefit claim, including individuals who were not at fault for the prior accident such as passengers and pedestrians
- Were not also purchasing a property policy (e.g., homeowners' insurance)
- Resided in certain Ontario municipalities
- Had less than one year of history as an insured under an auto insurance policy in Canada

The “harm” created by Take-All-Comers non-compliance can be invisible to consumers who may simply be directed to the next available quote, but results in a lack of readily available auto insurance for some and can impact competition in the market.

⁷ The scope of the review was limited to private passenger auto insurance and did not include other types of auto insurance such as recreational vehicles or commercial insurance. The review was also focused on areas within FSRA's authority.

B. Public Consultation

In March 2020, FSRA launched a [public consultation](#) related to Take-All-Comers requirements. We wanted to hear from consumers, insurers, brokers, and agents. This input was critical to FSRA being able to effectively supervise auto insurers and better protect the public.

In our consultation, consumers generally expressed frustration over insurance rates and availability of coverage, as well as a general lack of transparency around rates. Many brokers described the cumbersome, frustrating, and/or unfair processes some insurers were using to avoid providing quotes and approving applications.

FSRA learned of insurers who were slowing auto insurance quotes, refusing to quote drivers who met their approved underwriting rules, or not responding to consumers, with the result that consumers were challenged to purchase or renew auto insurance in a timely way and often without transparency on the part of the insurer.

FSRA received comments and submissions from members of the auto insurance industry, including brokers, insurers, and trade associations. They brought forth valuable insight about current practices and recommendations to further protect Ontario's auto insurance consumers.

C. Parallel Supervisory Review

At the same time as we launched our public consultation in Q1 2020, FSRA began our supervisory process. FSRA identified various activities and practices by insurers and/or brokers that may be contravening the Take-All-Comers requirement, and, as a result, conducted compliance reviews of select insurers to better identify non-compliance or instances of consumer harm.

FSRA asked insurers to review internal practices related to Take-All-Comers in Q1 2020, and allowed insurers a short period of time to rectify their non-compliant practices. This was also followed by a stringent internal audit assessment in Q1-2 2022 to ensure ongoing compliance and to leverage functions that oversee other regulatory requirements in insurers.

Part Two: Early Supervision Findings

1. Identification of Contraventions

FSRA identified several activities through our public consultation and supervisory assessments that appeared to contravene both the spirit and the rule of the “Take-All-Comers” requirement, such as:

- Failing to offer a renewal to qualifying customers, including customers who had not missed a single premium installment payment.
- Requiring consumers to complete written applications for reasons that were seemingly arbitrary or could not be characterized as exceptional and warranted by the risk presented.
- Revoking or qualifying underwriting authority insurers granted to brokers and agents for reasons inconsistent with their filed and approved underwriting rules.
- Failing to respond to qualifying customers’ quote requests in a commercially reasonable timeframe.
- Refusing to quote or renew for reasons not listed in the insurer’s approved underwriting rules on file with and approved by FSRA.

The emergence and popularity of auto insurance rate aggregators has grown over the last couple years. These are unregulated digital intermediaries between insurance providers and consumers. However, the use of online quoting platforms for the sale and pricing of auto insurance has meant insurers have been able to operate with two sets of underwriting rules – those filed with and approved by FSRA and supplied to consumers via brokers and agents and those supplied by third-party, web-based quoting systems/aggregators. This has led to another practice that contravenes Take-All-Comers:

- Using third-party, web-based quoting systems/aggregators to filter out less-desirable sales leads.

Using online rate aggregators can provide consumers a convenient way to get a wide range of policies and providers from multiple insurers from a single platform. However, while aggregators may give consumers the impression that they are able to do a side-by-side comparison of different insurance plans and hopefully have cost savings, these sites also play a role in Take-All-Comers by allowing insurers to deny consumers coverage based on unfiled underwriting rules.

2. Co-operation with Registered Insurance Brokers of Ontario (RIBO)

Brokers, although appointed by insurers, are considered “independent”, and are licensed and regulated by RIBO, a self-regulatory organization. Brokers distribute about half of all auto insurance in Ontario.

FSRA doesn’t have direct regulatory oversight of brokers; however, FSRA is required, under the provisions of the [Registered Insurance Brokers Act \(RIB Act\)](#), to make an annual examination of the affairs of RIBO and to report to the Minister of Finance.

In addition to their obligations under the *RIB Act*, brokers are also subject to the Take-All-Comers requirement and FSRA’s Unfair or Deceptive Acts or Practices (UDAP) Rule. For that reason, FSRA invited RIBO to partner with us on the compliance review, recognizing the need for a coordinated response to ensure effective consumer protection. RIBO published its [TAC Spot Check Interim Report](#) in late 2022, which contained its observations on brokers’ disclosure requirements and renewals, as well as its initial recommendations. RIBO’s [TAC Spot Check Final Report](#), published in June 2023, contained further observations, as well as additional recommendations and next steps, including that “RIBO will continue to monitor overall brokerage compliance and make appropriate recommendations to brokers.”

During our work, some brokers expressed reluctance to discuss their concerns on the record about some insurers’ lack of compliance with the Take-All-Comers requirement for fear of reprisals by those insurers, including the cancelling of their appointment as a broker and/or potential financial repercussions. This was one of the reasons why FSRA recommended that the government grant FSRA broad whistle-blower protection authority, which is now in place.⁸

However, FSRA also observed some brokers were themselves complicit in insurers’ non-compliance. Specifically, since non-compliance could, in some instances, result in

⁸ FSRA’s new Whistle-blower protection, implemented through statutory amendment in April 2022, allows insiders of insurers, agents, and brokers to confidentially report potential Take-All-Comers non-compliance through our [Whistle-blower Program](#). Whistle-blowers will be protected from various forms of retaliation, including, in the case of a brokerage, having its appointment contract with the insurer terminated. The roll-out for the Whistle-blower Program is ongoing with further education and information in development for all FSRA sectors.

improved profitability of the business which the broker placed on behalf of a consumer with an insurer, insurer non-compliance could also benefit brokers through contingent profit commission arrangements. The role incentives played in contributing to how engrained non-compliance had become cannot be discounted or ignored.

FSRA continues to conduct annual statutory examinations of RIBO, which will include that it delineate priorities, specific outcomes and timelines to enable a more robust assessment of progress, challenges/constraints, and key measures of success as they relate to broker conduct. This information can be used to better understand, assess, and address circumstances which could potentially result in consumer harm caused by brokers. This will compliment the work which FSRA has already undertaken through this review and the existing regulatory initiatives that FSRA has in place to improve consumer outcomes as it relates to insurer and agent conduct for auto insurance.

3. Active Supervision

FSRA leveraged our role as a new principles-based and outcomes-focused regulator to adopt an agile supervisory approach. In February 2020, FSRA sent out a 1st “Dear CEO” letter⁹ to 12 insurers requiring them to complete self-reviews of their operations and compliance controls to ensure they were adhering to the Take-All-Comers requirement, self-report any Take-All-Comers contraventions, and develop a remediation plan. The 1st “Dear CEO” letter also noted that we would be collaborating with RIBO and that the examination results would be shared bilaterally to help us determine whether further action was required. Only one insurer provided a written response to the 1st “Dear CEO” letter confirming it had completed its self-review, and shared the results and remedial actions taken. Other insurers provided verbal confirmation to FSRA that they completed their reviews with no contraventions to report.

The lack of self-reported contraventions in response to the 1st “Dear CEO” letter contrasted with information from the [public consultation](#) and our continuing concerns about Take-All-Comers non-compliance based on other sources of information. As a result, in early 2021, FSRA sent out 2nd “Dear CEO” letters to support an in-depth review of 3 private passenger

⁹ A “Dear CEO” letter is a type of supervisory correspondence used to communicate with senior people in regulated entities about serious issues that require their quick action (source: *Supervisory Correspondence*. UK Financial Conduct Authority, 2023, [Supervisory Correspondence](#)).

auto insurers and their subsidiaries. A 3rd letter was sent out to initiate insurer examinations. Copies of the three letters and a list of the 12 insurers can be found at [Appendix II](#). FSRA also conducted a comprehensive sector-wide review to review various activities and practices that may be contravening Take-All-Comers provisions and to identify risks or instances of consumer harm.¹⁰

FSRA's review included interviews with brokers and agents, insurance company executives, and a review of applicable documents (e.g., 90-day plans and internal audit reports). We conducted our supervisory assessments in two phases:

Pre-Examination Phase – Direct engagement with intermediaries

FSRA, in collaboration with RIBO, contacted 5 brokerages and 11 brokers, to explore and better understand the information received during the consultation. This phase also included interviews with 4 agents.

Examination Phase – Direct engagement with insurers

FSRA began this preliminary examination phase by issuing formal notification to the CEOs of 3 insurers from among the largest 12 auto insurers in Ontario¹¹, reiterating the opportunity for self-reporting Take-All-Comers non-compliance to mitigate enforcement action.¹² The scope of each examination was limited to practices and procedures affecting private passenger auto insurance consumers in key underwriting activities.

4. Preliminary Detailed Observations

Findings from the preliminary examination phase included identified instances and allegations that insurers were “slowing” auto insurance quotes, refusing to offer insurance to drivers who met their approved underwriting rules, or simply not responding to consumers. Some insurers were alleged to be making it practically impossible for certain consumers to do business with that insurer.

¹⁰ Select insurers were chosen to ensure a representative sample of Ontario's auto insurance market. 12 insurers were required to submit an internal audit to FSRA, but only 3 insurers were subject to an examination.

¹¹ Responses from the public consultation as well as market representation based on size and distribution channels were considered in selecting insurers for examinations.

¹² The focus period was January 1, 2018, through to the date of the examination, providing for two complete years of pre-pandemic business review.

These findings led FSRA to identify the need for the more comprehensive approach afforded by a thematic review.¹³ A timeline of FSRA's thematic review can be found at [Appendix III](#).

Part Three: Setting Clear Expectations

1. FSRA Guidance Confirms Legal Obligations to Consumers

FSRA issued Guidance to clearly set out our interpretation of the Take-All-Comers requirement, as well as its application to the use of aggregators. FSRA's Guidance was informed by the contraventions we identified during insurer examinations and meetings with company executives, as well as information obtained from the marketplace in terms of how consumers were experiencing barriers to obtaining auto insurance quotes.

A. FSRA Approach and Interpretation Guidance

In November 2021, FSRA issued [Take-All-Comers Interpretation Guidance](#) to restate auto insurance providers' existing legal requirements and obligations, and to address advancements in technologies used by insurance providers and the use of aggregators.

A previous Take-All-Comers bulletin, Bulletin No. A-01/09: Automobile Insurance Quoting and Underwriting Practices, was issued by the legacy regulator, the Financial Services Commission of Ontario, in 2009. It set out the basic law around the Take-All-Comers requirement.

FSRA's Guidance is intended to strengthen conduct standards, improve outcomes for consumers, and level the playing field for insurers. Full compliance with the Guidance will prevent activities that preclude or frustrate eligible consumers' efforts to obtain a quote, purchase, or renew auto insurance.

¹³ Thematic reviews are used by leading regulators around the world to "assess a current or emerging risk regarding an issue or product across a number of firms in a sector or market. It can focus on finding out what is happening and suggesting ways of tackling the problem" (Source: *Thematic Reviews*. UK's Financial Conduct Authority, 2016, [Thematic reviews | FCA](#)).

When FSRA released the Take-All-Comers Guidance, we alerted insurers that we had a variety of regulatory tools available to us to ensure compliance, including the use of formal enforcement proceedings, depending on the nature and severity of the non-compliance.

FSRA also committed to consider steps taken by insurers to identify, disclose and remediate past Take-All-Comers contraventions as a mitigating factor in determining enforcement response to encourage prompt, accurate, and comprehensive actions to facilitate a swift return to full compliance within the market.

B. UDAP Rule: A New Regulatory Tool

The Take-All-Comers Guidance was updated in April 2022 to reflect the coming into force of the new [Unfair or Deceptive Acts or Practices \(UDAP\) Rule](#) which replaced O. Reg. 7/00 under the *Insurance Act*.

Generally, the UDAP Rule is aimed at making the supervision of insurance more transparent, dynamic, and flexible. It contains specific provisions that explicitly prohibit insurers and intermediaries from engaging in conduct that does or could lead to unfair treatment of consumers in matters related to auto insurance quotes, applications, contracts, or renewals.

The UDAP Rule confirms that conduct, including action, inaction or omission, which could reasonably be expected to result in the breach of Take-All-Comers requirements is an unfair or deceptive act or practice and can attract the sanctions allowed under the *Insurance Act*. This includes conduct that varies processes and procedures in a way that makes it more difficult for certain persons to shop for insurance, for the purpose of delaying or discouraging them from doing so.¹⁴

¹⁴ *Unfair or Deceptive Acts or Practices (UDAP) Rule* ss. 2(1) and 9(1)(i) and Take-All-Comers Guidance.

Part Four: Active Reporting and Supervision

1. Requirement to Review and Report to FSRA on Insurer Practices

FSRA met with CEOs from the largest 12 auto insurers, as well as members of their management teams, as part of the compliance review process. Through these meetings, executives said they were largely unaware of business practices within their organizations that may be non-compliant, though all identified that they believed such practices were being followed in the market by other insurers. There were also instances of insurers having an incorrect interpretation of how the Take-All-Comers requirement applied in certain circumstances. For example, some insurers incorrectly interpreted the use of aggregators as lead generation (marketing) rather than quoting activity.

FSRA concluded that bringing what would amount to numerous individual enforcement actions against insurers would create unacceptable delays in restoring consumer protection by precluding the coordinated market-wide remediation necessary for restoring compliance and fair competition. Not only are enforcement actions lengthy and resource intensive, their adversarial nature, by definition, makes swift and voluntary remediation by regulated entities unlikely.

After careful consideration, we undertook a supervisory strategy whereby we would allow insurers a reasonable period of time to get into compliance and then have their internal audit functions validate that the insurers had in fact achieved full compliance in accordance with our requirements.

Following the bi-lateral discussions between FSRA and insurers, and the subsequent issuance of Guidance, FSRA required the 12 largest insurers to:

1. Take *immediate* steps to review (for), identify and *cease* any non-compliant practices;
2. Implement internal monitoring and control procedures;
3. Provide a written report to FSRA within 90 days (mid-February 2022) on items 1 and 2 above; and,

4. Provide an internal audit¹⁵ report to FSRA by end of June 2022, validating compliance.

All 12 insurers acknowledged these obligations in Undertakings provided to FSRA (Undertaking). Copies of a generic form of Undertaking can be found at [Appendix IV](#). The Undertakings ensured there was mutual clarity as to regulatory expectations and insurer obligations under the Take-All-Comers requirements, and provided an added mechanism to hold the insurers accountable for ceasing, reporting and remediating any practices that did not comply with the Take-All-Comers requirement.

As required, all 12 insurers provided their 90-day reports to FSRA in February 2022 and provided internal audit reports describing their Take-All-Comers compliance status by June 30, 2022. Internal audit activity was reported to an insurer's CEO and to the audit committee of its board. We assessed the reporting and engaged further with insurers to understand their information as described below. One insurer was escalated to FSRA's Legal & Enforcement team for investigation and consideration of enforcement sanction due to concerns that it did not adequately identify, cease and remediate practices that did not comply with Take-All-Comers requirements.

2. Insurer and Intermediary Risk Assessment

Through the review of documents and interviews with intermediaries and insurers' representatives, we noted the following in one or both phases of our supervisory assessments:

Use of Unfiled Underwriting Rules

Insurers and intermediaries used rules that went beyond those filed with and approved by FSRA to refuse to quote, deflect to paper application and manual underwriting, decline new business, or refuse to renew. These unfiled rules were implemented in one or more of the following ways:

¹⁵ "Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes" (Source: *About Internal Audit*. The Institute of Internal Auditors. [About Internal Audit \(theiia.org\)](https://theiia.org)).

- i. **Communicated to intermediaries** – Insurers communicated unfiled rules to brokers/ agents verbally or in writing, which intermediaries then implemented.
- ii. **Programmed in proprietary and third-party quoting and underwriting systems** – Insurers programmed their own proprietary quoting/ underwriting systems with unfiled underwriting rules and instructional messages or provided them to quoting vendors (third parties) to be programmed in comparative quoting systems. When triggered, these unfiled rules resulted in the immediate suspension of binding authority and the display of a ‘decline’ or ‘refer’ message. A list of Unfiled Underwriting Rules and System Messages can be found at [Appendix V](#).

Once messages displayed a request for additional input, brokers were inclined to proceed to the insurer with the next best premium, notwithstanding some insurers offered to consider paper applications. Submitting paper applications resulted in underwriters at the insurer manually reviewing the risk and deciding eligibility. As compared to the standard automated process, the paper application and manual underwriting process increased processing time from minutes to days and even weeks.

- iii. **Communicated to aggregators** – Insurers and intermediaries provided aggregators with unfiled underwriting rules to be implemented on aggregators’ websites. When triggered, no referral quotes were produced for those insurers and brokers.

Use of Reports and Data Analytics in an Unfavourable Manner

Insurers implemented risk classification systems that:

- i. **Established maximum targets for and/or monitoring “low-quality” business** – Some insurers set maximum targets for and/or monitored “low-quality” business (i.e., consumers with a higher propensity to be in an accident). Once an intermediary reached the target, they were required to refuse business fitting the low-quality criteria, unless there were mitigating factors (e.g., consumers purchasing a multi-vehicle or property policy).

Some insurers treated exceeding the established target for low-quality risks as a performance metric. This incentivized intermediaries to limit the capacity for consumers considered “low-quality,” despite being eligible based on filed and approved rules.

Other insurers didn’t set targets, but instead estimated the value and risk of the applicant to the book of business prior to binding a policy. This information may have been used at the discretion of the intermediary, to the disadvantage of

consumers, particularly for intermediaries whose compensation included a quality score factor.

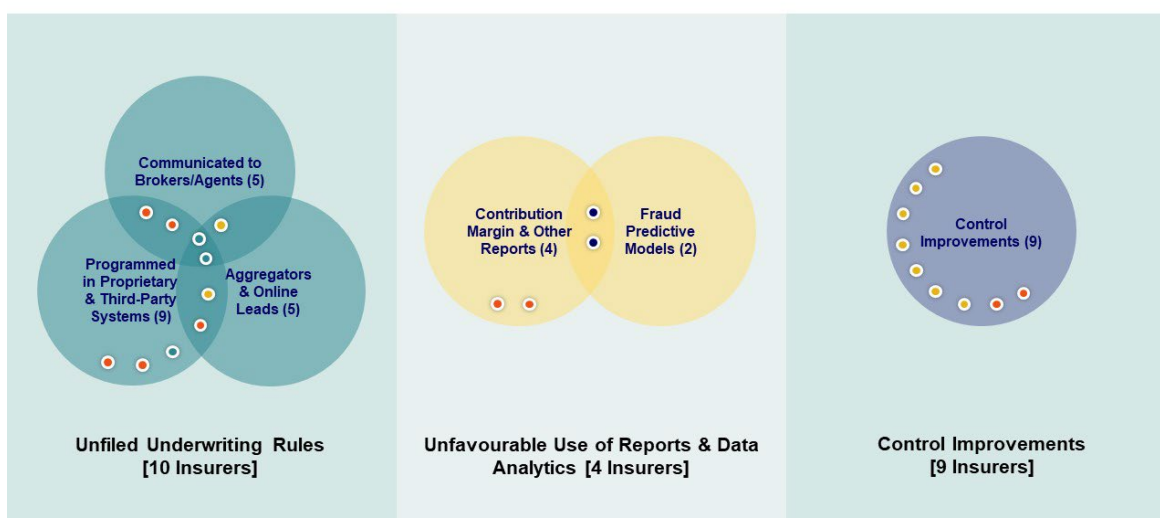
- ii. **Misused fraud analytics tools to deny access to coverage** – Insurers used data analytics tools and predictive models designed to detect fraud to recognize traits deemed “suspicious”, and prompt for further review. While not all fraud flags are a violation of Take-All-Comers, factors that may result in a fraud flag included a questionable IP address or using the same address as an existing policyholder.

Consumers had to complete a paper application and/or provide additional documents once “suspicious”/ “fraud” flags were triggered. If a consumer abandoned the process for any reason (e.g., the request was laborious and time consuming), the fraud flag remained on their profile. This meant the consumer was forced to submit a paper application/supporting documentation the next time they sought coverage from that insurer.

3. Results of Insurers’ Self-Reviews

FSRA received the results of insurers’ internal audit assessments in June 2022, which reported on their reviews of Take-All-Comers compliance through their internal audit functions. Insurers corroborated FSRA’s examination findings and confirmed that they had or were in the process of addressing Take-All-Comers compliance issues. One key observation was that insurers also had or would be enhancing their internal controls to measure and report on Take-All-Comers (Figure 1):

Figure 1
Summary of Practices Self-Reported by 12 Insurers
(not independently validated by FSRA)



KEY

- No planned corrective action as insurer considered the activity compliant/process reasonable
- Implemented corrective action prior to submitting 90-day plan to FSRA in February 2022
- Implemented corrective action prior to submitting Internal Audit Report to FSRA in June 2022, but after 90-day plan
- Implementation scheduled for date(s) after submitting Internal Audit Report to FSRA in June 2022

A chart with details of the self-reported non-compliant practices can be found at [Appendix VI](#).

- 10 of 12 (83%) insurers reported use of underwriting rules that went beyond rules filed with and approved by FSRA, whether directly in their system and/or through third parties (agents, brokers, aggregators).
 - 8 of these 10 insurers indicated that all related activities had ceased.
 - 1 insurer reported they had identified additional measures to enhance broker/agent communication and aggregator compliance which extended beyond June 2022.
- FSRA identified 1 insurer for enforcement action as of the date of this report.
- 4 of 12 (33%) insurers reported use of at least one mechanism that has or may have influenced avoidance of risk based on underwriting rules not filed with FSRA. This included using reports and data analytics tools that some insurers assessed as reasonably designed and not intended to affect the underwriting process.

2 of these 4 insurers indicated in their internal audit report that all related practices had ceased. FSRA's upcoming supervisory activities will include follow-up with the two insurers that used quality reports and data analytics tools but who indicated that the systems in place were reasonably managed, and as such took no corrective actions.

FSRA intends to pursue additional supervisory activities to ensure it achieves desired consumer outcomes, as the use of these tools may have increased processing time and/or resulted in consumers not getting a quote/coverage from the insurer with the lowest price.

- 9 of 12 (75%) insurers identified enhancements to governance and monitoring controls because of their post Take-All-Comers Guidance review and the internal audit. 2 of these 9 insurers confirmed they had implemented control improvements,

while the remaining 7 were in the process of implementing and/or testing the operationalization of the new controls.

FSRA's next steps in its supervisory monitoring efforts will be to review and validate insurer implementation and testing of these controls improvements as well as other self-reported practices which have since been reported as remediated.

By the spring of 2022, brokers reported a notable reduction in the number of instances of alleged contraventions. Insurers had similar observations of their competitors. By the end of summer 2022, FSRA concluded that – with the exception of the insurer identified below and based on what insurers identified, reported, and remediated – identified non-compliance has been subject to verified remediation.¹⁶ FSRA also validated by year-end of 2022 through interviews with various intermediary channels who stated similar examples that methods to deflect and delay quotes by insurers had been mitigated. FSRA will prioritize validation of insurer self-reported compliance with activities to promote continued adherence with Take-All-Comers requirements.

4. Supervision Findings: Systemic Non-Compliance

After reaching the conclusion that several practices in the marketplace had been longstanding and constituted Take-All-Comers violations, which was confirmed through practices the 12 insurers self-reported in their internal audits, FSRA concluded that the non-compliance was systemic. What that means is that most of the market was “offside”. Though it may have started with one or more insurers¹⁷, non-compliance spread to competitors who, faced with being at an unfair disadvantage, followed suit. It appears that this behaviour became “normalized” inside the organization and systemic across the market.

¹⁶ It would require a significant amount of FSRA's resources to confirm this independently. However, FSRA's ongoing and future supervision will help us to better evaluate the extent to which compliance has been achieved across the market.

¹⁷ FSRA has not been able to identify the source of long-standing Take-All-Comers non-compliance.

Part Five: Conclusion and Next Steps

1. Enforcement

As reflected in our statutory objects under the *Financial Services Regulatory Authority of Ontario Act, 2016*,¹⁸ FSRA is committed to protecting consumers who use regulated financial services in Ontario or are beneficiaries of Ontario-registered pension plans. FSRA has a responsibility to:

- Monitor regulated persons and entities to ensure they adhere to the required standard of compliance; and
- Based on our risk-based intake assessment and principles-based approach to regulation, initiate enforcement proceedings if there is non-compliance creating consumer harm.

Depending on the nature, circumstances, and severity of the misconduct related to Take-All-Comers contraventions, FSRA's responses may range from education and remediation, particularly in circumstances where the non-compliance was inadvertent, to regulatory interventions, and proposed enforcement sanctions, including administrative monetary penalties, licensing conditions, compliance orders, license revocation, or even provincial offence charges. The appropriate action is determined based on all relevant information and evidence, including the level of intention, scope and severity, potential consumer and market harm, and any proactive remedial efforts undertaken.

The 90-day reports insurers provided FSRA in February 2022 described their reviews, results, and remedial actions completed, in-progress and planned. Each insurer also submitted the Undertaking agreeing to fully comply with the Take-All-Comers requirement and address FSRA's expectations, as set out in the Take-All-Comers Guidance.

Following an investigation, FSRA determined that, despite reporting to FSRA with a remediation plan and some internal efforts to achieve compliance, two subsidiaries of the Aviva Group, being Aviva Insurance Company of Canada (AIC) and S&Y Insurance

¹⁸ [*Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8.](#)

Company (S&Y), had continued to engage in practices which appeared to amount to contraventions of the Take-All-Comers requirement.

Following the initiation of enforcement activity, a settlement was reached and both subsidiaries acknowledged that, despite their efforts, they did not fully comply with the Take-All-Comers requirement or the Aviva Group's Undertaking to FSRA given on February 26, 2022. In Minutes of Settlement, AIC and S&Y acknowledged that there were instances following the Undertaking where their quotes were provided to aggregators but not offered to consumers, even though they were the lowest rate available. For AIC, there were 201 such instances between February 26 and June 20, 2022, and for S&Y there were 616 such instances between February 26 and April 30, 2022.

AIC and S&Y have acknowledged their non-compliance and FSRA has recognized certain mitigating circumstances and efforts to comply. On consent, FSRA imposed administrative penalties totalling \$600,000 and AIC and S&Y agreed to update their controls prior to re-entering the aggregator market in Ontario.

The Enforcement proceedings that, to-date, FSRA has initiated for alleged breaches of the Undertaking and alleged non-compliance with the Take-All-Comers requirement can be accessed here:

- [Aviva Insurance Company of Canada Enforcement Action](#)
- [S&Y Insurance Company Enforcement Action](#)

Initiating enforcement is consistent with FSRA's approach. We considered steps insurers took to identify, disclose, and remediate past Take-All-Comers contraventions as a mitigating factor in determining our enforcement response, particularly if there was prompt, accurate, and comprehensive action taken to effectively facilitate full compliance with the Take-All-Comers requirement. Where FSRA determined that this had not occurred and consumers were not provided with the lowest quotes available, we responded appropriately, including imposing enforcement sanctions.

FSRA is committed to transparent, public reporting to increase public awareness of misconduct and of the sanctions taken to improve consumer protection, and to deter future misconduct in the regulated sectors. We publicly report all enforcement action in accordance with our [Transparent Communication of Enforcement Actions Guidance](#).

2. Next Steps – What This Means for the Auto Insurance Sector Going Forward

A. Operational Risk Management Guidance

Our work with insurers revealed opportunities to improve consumer outcomes consistent with the Take-All-Comers requirement. Concurrent with the execution of FSRA's regulatory strategy on Take-All-Comers, we issued [Operational Risk Management \(ORM\) Information Guidance](#) in September 2022. In addition to supporting FSRA's transition to a principles-based, outcomes-focused regulator, the operational risk framework has direct applicability to auto insurers seeking to improve their control environments, including controls related to Take-All-Comers and other regulatory requirements.

FSRA's concerns about operational risk are driven by the negative consumer outcomes and breaches of applicable law that can occur if operational risk is not well managed. The purpose of this ORM Guidance is to promote just, reasonable, and accurate rates. It will also support fair treatment for consumers engaged in the underwriting process.

B. Accountability of Leaders

What we found is also a reminder that an effective compliance culture in organizations comes from company leaders who take accountability by personally ensuring compliance is consistently nurtured and tested using proven systems, processes, policies, and controls. Compliance gaps reflected in the organizational culture we noticed during the Take-All-Comers Thematic Review led us to the following observations:

- Employees at all levels must understand expectations for behaviour and know they have their senior leadership's support to speak up and take action when they see wrongdoing or unfair treatment of consumers.
- It may be helpful for decision-makers to reflect objectively on the role financial incentives can play in signalling expectations to employees and distributors and motivating misconduct.
- When it comes to identifying problems in a timely way, senior leadership may be well served to assume they are always the last to know about problems in their operation and that "no news" is rarely "good news."

- Regulated entities' oversight functions, including their board of directors, audit functions, and compliance functions, must focus on reporting metrics that demonstrate that the consumer outcomes set out in regulatory requirements and outlined in FSRA's guidance are being met.

Regulated entities need to ensure their internal processes, controls and governance comply with Take-All-Comers and other legal requirements. Their failure to identify and remediate Take-All-Comers breaches shows a disregard for their obligations, as well as a failure of its leadership to act responsibly, prudently, and in accordance with a reasonable standard of care.

C. Principles-Based Regulation

Principles-based regulation (PBR) can offer many benefits to regulated entities and the consumers they serve. Facilitating consumer choice and promoting innovation are just two advantages of clearly communicated regulatory expectations and outcomes-focused, principles-based regulation.

However, PBR also demands that regulated entities' senior management and boards of directors assume accountability for their regulated entities meeting those requirements and FSRA's expectations. Successfully operating in a PBR environment requires having the systems, processes, policies, data, reporting, and culture to act consistently, and for senior management of regulated entities to assure itself, its board, and the regulator that the organization is achieving the desired outcomes, particularly where the fair treatment of consumers is concerned.

Most insurers' internal audit functions have already identified a need for control improvements. Taking the widest possible lens in exploring those remediations to accommodate PBR more generally may be an important opportunity to consider.

Regulated entities still have some progress to make to demonstrate readiness to embrace a principles-based regulatory regime. One of the things that needs to be improved is for senior management and boards of directors to better understand and act on ensuring that their organization internalizes the desired regulatory outcomes consistent with the identified principles.

3. Conclusion

Systemic Take-All-Comers non-compliance, confirmed through FSRA's thematic review, created consumer harms, led to unfair competition, and diminished market health. However, ongoing supervision and intervention, as well as compliance and internal

audit processes within insurers, has led to remediation of identified non-compliance and a belief by the sector that they have achieved a coordinated and timely return to market-wide compliance with the Take-All-Comers requirement. This was achieved with the cooperation and input of many groups and individuals who supported our mandate and ongoing work.

FSRA's supervisory tools, including our new whistle-blower protection program, will help to identify non-compliance in the marketplace by enabling us to better deter, detect, and respond to Take-All-Comers contraventions and influence market behaviour. FSRA is also committed to further Take-All-Comers compliance by executing the following:

- Following-up with insurers to confirm complete and effective implementation of planned remedial actions.
- Following-up with 2 insurers that used quality reports and data analytics tools but who took no corrective actions believing they had reasonably managed systems in place.
- Continuing collaborative work with RIBO, including monitoring the marketplace through questionnaires and/or post-consultation feedback with brokers and other interest groups.
- Including elements of Take-All-Comers supervision in all future auto insurers conduct examinations, which will extend beyond the 12 insurers featured in this review.
- Conducting "secret shopper" initiatives.
- Assessing the relationship aggregators have with insurers and brokers, in consultation with other jurisdictions, to determine what supervisory framework would be best suited for aggregators.
- Leveraging data and analytics capability to keep abreast of market changes.
- Taking decisive enforcement action where warranted and in a transparent manner.

Consumers can also expect that FSRA will continue to act within our authority to supervise and enforce the Take-All-Comers requirement in defense of consumers' right to fair and transparent access to auto insurance.

We encourage consumers to ask their broker or agent questions when buying or renewing your auto insurance policy. For example, it is reasonable to expect straight answers to questions about their incentives and how they relate to products you buy from them. Consumers should also be entitled to know how many insurers are available

to provide quotes, which ones a broker or aggregator deals with, and which ones did not provide a timely quote and why.

Given the high level of engagement by FSRA with insurers, the findings, and the use of existing compliance and internal audit functions to achieve compliance with the Take-All-Comers requirement, future instances of non-compliance will be met by FSRA with a zero-tolerance approach so that FSRA can continue to protect the interests of consumers and maintain desired market protections.

These actions will help to sustain market-wide Take-All-Comers compliance going forward.

Appendices

Appendix I: Glossary of Key Terms

Appendix II: Dear CEO Letters and List of Recipient Insurer Groups and their Subsidiaries

Appendix III: Take-All-Comers Thematic Review Timeline

Appendix IV: Forms of Undertaking

Appendix V: Unfiled Underwriting Rules and Systems Messages

Appendix VI: Self-Reported Non-Compliant Practices

Appendix I: Glossary of Key Terms

Aggregators – Aggregators act as a conduit between consumers and insurance providers, they do not offer insurance products of their own, but, depending on the facts, they may conduct activities which offer, solicit or provide quotes for insurance products provided by others and such activities may be subject to regulation in Ontario. Visitors to an aggregator’s website are invited to input information like that required on an Ontario application for auto insurance form, which when submitted, displays comparable prices from multiple insurers and brokers. Consumers have the option to pursue quotes from the list provided, and aggregators have arrangements with brokers and insurers to be compensated for the lead that resulted in a sale.

Binding – Underwriting authority granted by an insurer to an intermediary, to commit the insurer to a new policy without prior approval from the underwriting department. With automation, binding is managed in the underwriting system.

Comparative Quoting System – Third-party system used by brokers to generate estimates of insurance premiums (quotes) from the insurers whose products they distribute.

Eligible Consumer – Consumer who meets an insurer’s underwriting rules filed with and approved by FSRA, thus qualifying for auto insurance coverage from said insurer.

Insurance Intermediaries – Intermediaries fall into two categories

- i. **Insurance Agent** – An employee or independent representative, excluding brokers, appointed to act on behalf of one insurer for the purpose of negotiating and/or soliciting insurance. Agents are defined by the [Insurance Act](#) and require an Ontario license issued by FSRA to act on behalf of an insurer. Agents transact business directly through the insurer’s quoting and underwriting platform.
- i. **Insurance Broker** – An independent distributor of the products of multiple insurers, who solicits and negotiates insurance contracts on behalf of customers. Brokers are defined by the [Registered Insurance Brokers Act](#) and are licensed and regulated by RIBO. Brokers have contracts with insurers and are compensated by them but are intended to represent the interests of their clients. Brokers transact business predominantly through a third-party quoting and underwriting platform that has interface to the system of the insurers they represent. Approximately half of the auto insurance distributed to Ontario drivers is through this channel.

Insurer – Used interchangeably with the term ‘insurance company’, it is a person or company who undertakes, agrees, or offers to undertake a contract of insurance. An insurer is defined by the *Insurance Act* and requires an Ontario license issued by FSRA. Insurers own the

insurance product which they distribute directly and/or through intermediaries. Reference to an insurer includes all insurers within a group, that is, subsidiaries and all insurers controlled by the same company.

Lead – Information relating to a person who has accessed an aggregator’s website and has submitted contact information for obtaining information on an insurance product.

Proprietary System – Quoting and underwriting application owned and/or managed by the insurer.

Quote – An estimate of premiums for insurance coverage based on information entered in a computer program. A quote is not an offer for insurance or an insurance contract.

Registered Insurance Brokers of Ontario (RIBO) – RIBO is a self-regulatory organization responsible for the licensing and supervisory oversight of insurance brokers in Ontario. FSRA is required under the provisions of the *Registered Insurance Brokers Act*, to make an annual examination of the affairs of RIBO and report to the Minister of Finance.

Remediate – Action designed and taken to remedy or fix an identified problem.

Risk – Exposure to an event that may cause harm to person and/or property.

Thematic Review – In-depth analyses of limited topics—or themes—which can provide invaluable insights for market conduct supervisors.

Third-Party System – Quoting and underwriting computer application used by an intermediary that is not owned or managed by the insurer or intermediary.

Underwriting – Process of assessing the amount of risk a potential or existing policyholder present to an insurer. With automation, insurance applications are completed and uploaded electronically, where the risk is evaluated against embedded underwriting rules to determine eligibility.

Underwriting Rules – Criteria that an insurer uses to decline, limit, or terminate coverages to a risk. These rules identify the coverage that will or will not be provided and must be filed with and approved by FSRA, as required in section 238 of the *Insurance Act*.

Underwriting System (Automated) – Computer software that uses advanced algorithms to analyze a client’s risks and generate a policy profile based on criteria (rules) programmed in the technology. The insurance industry has broadly migrated to the use of technology-driven underwriting platforms for standard auto insurance policies.

Appendix II: “Dear CEO” Letters 1st “Dear CEO” Letter



www.fsrao.ca

5160 Yonge Street
Suite 100
Toronto ON
M2N 6L9

Telephone: 416 250 7250
Toll free: 1 800 668 0128

5160, rue Yonge
16^e étage
Toronto (Ontario)
M2N 6L9

Téléphone: 416 250 7250
Sans frais: 1 800 668 0128

February 28, 2020

Dear CEO,

RE: Insurer Obligations Under the *Insurance Act* and Ontario Regulation 7/00 (“UDAP”)

It has come to FSRA’s attention from auto insurance consumers and others that some insurers in Ontario may have been engaged in actions that appear to make it more difficult for customers to buy auto insurance or to continue with their existing insurer. If so, these actions are potential contraventions of what is commonly known as the “Take-All-Comers” rule.

The “Take-All-Comers” rule is a function of Section 238 of the *Insurance Act*, RSO 1990, c. I.8 (the “*Insurance Act*”) which prohibits an insurer from declining to issue, terminating or refusing to renew an auto policy or endorsement, except on grounds filed with FSRA. In addition, Section 237 of the *Insurance Act* prohibits an insurer from declining to issue, terminating or refusing to renew an auto policy or endorsement on any prohibited grounds set out in the regulations.

We are currently reviewing several alleged activities by insurers that on their face contravene the “Take-All-Comers” rule, including:

- Withdrawing underwriting authority of brokers and agents while failing to respond to qualifying customers’ quote requests in a commercially reasonable period of time;
- Refusing to quote or renew for reasons not listed in the insurer’s approved underwriting rules on file with FSRA;
- Failing to offer a renewal to qualifying customers including customers who have missed a single premium installment payment;¹ and
- Requiring the completion of written applications from customers and for reasons that cannot be characterized as exceptional and warranted by the risk presented.

¹ In addition to being a violation of s. 237, the use of missed payments as a method to terminate or refuse to renew an auto policy or endorsement is also a contravention of Paragraph 4 in Section 2(1) of Ontario Regulation 7/00 Unfair or Deceptive Acts or Practices.

FSRA is also aware of an alleged range of practices that may not be in direct contravention of the regulatory framework but appear to lack good judgement from insurers expected to behave in a manner consistent with utmost good faith. These include:

- Aggressively cancelling policies where the customer does not return explicit direction to renew by a specified date and other practices that seem only aimed at sending the customer elsewhere;
- Failing to offer a renewal to qualifying customers of brokers cancelled by the insurer when renewal is requested by the customer;
- Inadequately resourcing contact centres causing customers to hold for unreasonable periods of time; and
- Failing to respond in any way to customer inquiries.

The consumer's ability to obtain mandatory auto insurance is of particular concern to FSRA. Consumers expect and deserve to be treated fairly.

In the coming weeks and months, FSRA, working with the Registered Insurance Brokers of Ontario ("RIBO"), will be engaging in an open and transparent consultation with interested parties, including insurers, intermediaries and consumers to understand their views and perspectives on industry practices and risks as they relate to Take All Comers and Unfair or Deceptive Acts or Practices. I am enclosing a copy of the consultation document for your information.

FSRA will also be collaborating with RIBO by conducting coordinated examinations of select insurers, brokers and agents to identify where any of the practices identified in this letter may be taking place. Results of those examinations will be shared bilaterally to assist in drawing conclusions and determining whether further action is required, including referral to Legal & Enforcement. We may also communicate anonymized learning and feedback so industry and other stakeholders can benefit from the generic lessons learned and best practices observed.

As a result, FSRA strongly encourages all Ontario auto insurers to carefully review their practices in light of the concerns raised and take immediate remedial actions, including self-reporting to FSRA, to address any existing or potential contraventions of the "Take-All-Comers" rule. If these are promptly self-reported to FSRA, this will mitigate against the need for referral to Legal & Enforcement.

FSRA looks forward to your cooperation in continuing to focus on the best interest of the Ontario auto consumer and maintaining trust in the system.

Tim Bzowey
Executive Vice President
Auto/Insurance Products

Enclosure

2nd “Dear CEO” Letter



www.fsrao.ca

25 Sheppard Avenue West,
Suite 100
Toronto, ON
M2N 6S6

Telephone: 416 250 7250
Toll free: 1 800 668 0128

25, avenue Sheppard Ouest
Bureau 100
Toronto (Ontario)
M2N 6S6

Téléphone : 416 250 7250
Sans frais : 1 800 668 0128

Date, 2021

Name of CEO & Company/Address

Re: Examination of (state company) Take-All-Comers Obligations

In February 2020, FSRA notified insurers, including state company, of concerns raised by auto insurance consumers and others of actions by Ontario insurers that appear to make it more difficult to buy auto insurance or to continue with their existing insurer. These actions could result in potential contraventions of the Take-All-Comers provisions under sections 237 and 238 of the *Insurance Act*.

Referencing our letter dated February 28, 2020, we encouraged state company to:

- review its practices in light of the concerns raised
- take immediate remedial actions to address any existing or potential contraventions
- self-report to FSRA to mitigate against the need for referral to FSRA's Legal & Enforcement area.

FSRA has not received a report from state company.

From March 9, 2020 to June 5, 2020, FSRA held a public consultation related to Take-All-Comers requirements and heard from consumers, insurers, brokers and agents. Input received from the consultation reinforces the initial concerns received by FSRA.

FSRA will soon begin conducting examinations of insurers under sections 443 and 444 of the *Insurance Act*. Those examinations will seek to review various activities and practices that may be contravening Take-All-Comers provisions and identify risks or instances of consumer harm.

In the coming days, state company will receive notice of FSRA's intention to conduct an examination of state company, expected to commence on Date, 2021. In the event state company has conducted a review, has knowledge of the concerns raised, or has taken remedial actions to address any existing or potential contraventions, you are once again encouraged to report them to FSRA's representatives at the outset of the examination to mitigate against the need for referral to FSRA's Legal & Enforcement area.

Page 1 of 2

FSRA looks forward to your cooperation during the examination, continuing to focus on the best interest of the Ontario auto insurance consumer, and maintaining trust in the auto insurance system.

Yours truly,

Tim Bzowey
Executive Vice President
Auto/Insurance Products

Huston Loke
Executive Vice President
Market Conduct

Enclosure

3rd Letter



www.fsrao.ca

25 Sheppard Avenue West
Suite 100
Toronto ON
M2N 6S6

Telephone: 416 250 7250
Toll free: 1 800 668 0128

25, avenue Sheppard Ouest
bureau 100
Toronto (Ontario)
M2N 6S6

Téléphone: 416 250 7250
Sans frais: 1 800 668 0128

DATE: 2021

Dear **INSURER**:

Re: Examination pursuant to sections 443 and 444 of the *Insurance Act*, R.S.O. 1990, c. 1.8 (the “Act”) of:

INSURER

Referencing our letter from Tim Bzowey and Huston Loke dated March 15, 2021, the Financial Services Regulatory Authority (FSRA) will be conducting an examination of the Insurers, beginning **DATE 2021**. The examination will focus on compliance with the Take-All-Comers provisions¹ of the Act, including:

- (i) Activities and practices relating to the quotation, binding, issuance, mid-term adjustment, renewal or cancellation of automobile policies, including:
 - Changes to business processes;
 - Changes to access to or utilization of computer operating systems, applications, algorithms or portals;
 - Sales or underwriting guidance or directives issued or received (verbally, by email, or by document);
 - Direct or indirect communication or direction issued or received (verbally, by email, or by document);
 - Changes to, rehabilitation of, or cancellation of:
 - distribution contracts with the Insurers; and
 - distributor authority granted by the Insurers

¹ Take-All-Comers provisions are insurer obligations set out in sections 237 and 238 of the *Insurance Act* and section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990.

(ii) Activities and practices that directly or indirectly result in:

- declining to issue, terminating, or refusing to renew an automobile policy in respect of such coverages and endorsements as may be set out in the regulations;
- declining to issue, terminating, or refusing to provide or continue any automobile insurance coverage or endorsement on any ground that may be set out in the regulations; or,
- declining to issue, terminating, refusing to renew an automobile policy, or refusing to provide or continue any coverage or endorsement, on a ground that is not filed with FSRA.

The examination will be divided into components which will include the interviews of current employees of the Insurers, distributors, and external stakeholders and service providers, as required. The full examination is expected to take between 6 to 13 weeks.

First component of examination

The first component of the examination begins on **DATE 2021**. Due to current COVID-19 conditions, the examination will be conducted remotely by reviewing documents and conducting interviews by videoconference. However, if it is not feasible or effective to conduct the examination remotely or should the nature of any aspect of the examination require physical attendance at one of your locations, arrangements will be made using necessary safety precautions and equipment.

The first component of the examination will focus on:

1. Governance framework to support Take-All-Comers rules

- Risk identification and mitigation strategies.
- Documentation and communication of policies, detailed procedures and other guidelines to management, staff, outsourced service providers, intermediaries, and customers, as applicable.
- Communication of defined roles and responsibilities/accountabilities to management, staff, outsourced service providers, intermediaries, and customers, as applicable.

2. Control mechanisms to ensure compliance with laws and regulations or standards and frameworks of recognized external organizations

- Controls within documented policies, procedures, and other guidelines to mitigate risk and ensure compliance.

¹ Take-All-Comers provisions are insurer obligations set out in sections 237 and 238 of the *Insurance Act* and section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990.

- Training to employees, outsourced service providers and intermediaries on applicable standards.
- Independent reviews/audits of controls at the corporate, process and activity levels.

The scope of the first component of the examination will be limited to the Insurers' underwriting practices since January 1, 2018 affecting consumers in the Private Passenger Automobile category of Personal Insurance.

Underwriting activities will consider the following processes/activities:

1. Responding to consumer requests for quotes
2. Denying coverage and issuing policies
3. Processing policy changes/endorsements
4. Insurer-initiated mid-term cancellations
5. Policy renewal and Insurer-initiated non-renewal

The Officers assigned to the first component of this examination are:

1. Karen Vacciana, Senior Compliance Officer
2. Jacqueline Tse, Senior Compliance Officer
3. Miki Amakawa, Senior Compliance Officer
4. Gordon Rasbach, Senior Manager

Attached is a preliminary list of documents that are required at the outset of the examination. It should be noted that additional documents may be requested during the course of the examination as a result of discussions and interviews that we will be conducting.

Subsequent components of the examination

Subsequent components of this examination will focus on addressing any identified risks or instances of consumer harm, including any activities and practices that may be contravening Take-All-Comers provisions¹ of the Act.

If you have any questions relating to the timing or scope of this examination, please contact me by telephone at 416-902-4367 or by e-mail at michael.tin@fsrao.ca.

Kind Regards,

Michael Tin
Senior Manager
Market Conduct Division

Attachment: Documentation List

¹ Take-All-Comers provisions are insurer obligations set out in sections 237 and 238 of the *Insurance Act* and section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990.

Insurer Groups and Subsidiaries subject to Take-All-Comers Review:

Allstate

- Allstate Insurance Company of Canada
- Pafco Insurance Company
- Pembroke Insurance Company

Aviva

- Aviva General Insurance Company
- Aviva Insurance Company of Canada
- Elite Insurance Company
- Pilot Insurance Company
- S&Y Insurance Company
- Traders General Insurance Company
- Scottish & York Insurance Co. Limited

CAA

- CAA Insurance Company
- Echelon Insurance

Cooperators

- Co-Operators General Insurance Company
- CUMIS General Insurance Company
- The Sovereign General Insurance Company

Desjardins

- Certas Direct Insurance Company
- Certas Home and Auto Insurance Company
- the Personal Insurance Company

Definity

- Definity Insurance Company
- Sonnet Insurance Company

Gore

- Gore Mutual Insurance Company

Intact

- Intact Insurance Company ("Intact")

- Jevco Insurance Company (“Jevco”)
- Belair Insurance Company Inc. (“Belair”)
- Unifund Assurance Company (“Unifund”)

Northbridge

- Federated Insurance Company of Canada
- Northbridge General Insurance Corporation
- Verasure Insurance Company
- Zenith Insurance Company

TD

- Primmum Insurance Company
- Security National Insurance Company
- TD General Insurance Company

Travelers

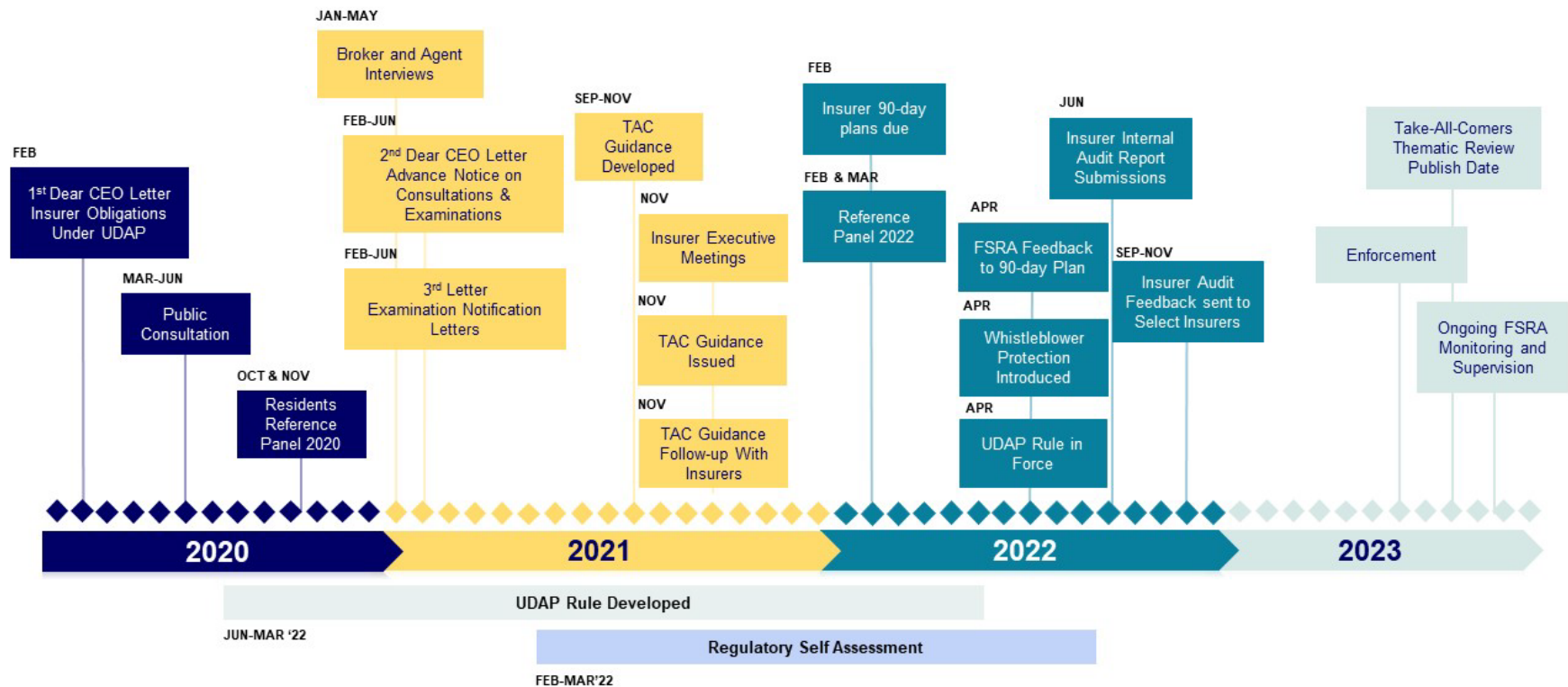
- The Dominion of Canada General Insurance Company
- Travelers Insurance Company of Canada
- St. Paul Fire & Marine Insurance Company (Canada Branch)

Wawanesa

- Wawanesa Mutual Insurance Company

Note that while all insurers listed above received the “Dear CEO” letter #1 and were required to complete a review, 90-day plan, and internal audit report, only three received subsequent “Dear CEO” correspondence.

Appendix III: Take-All-Comers Thematic Review Timeline



Appendix IV: Standard Form of Undertaking



UNDERTAKING

**** Note:** Minor modifications were made to address insurer circumstances.

WHEREAS the Financial Services Regulatory Authority of Ontario (“FSRA”) is conducting a review of insurance companies’ compliance with sections 237 and 238 of the *Insurance Act*, R.S.O. 1990, c. I.8 (the “Take-All-Comers Provisions”);

AND WHEREAS [Company name] has expressed its desire and intention to fully comply with the Take-All-Comers Provisions;

AND WHEREAS [Company name] has agreed to provide this Undertaking to evidence its agreement to fully comply with the Take-All-Comers Provisions;

AND WHEREAS this Undertaking is an undertaking as contemplated by paragraphs 441.1(d), 447(2)(c), and 448(1)(b) of the *Insurance Act*, R.S.O. 1990, c. I.8;

NOW THEREFORE, [Company name] undertakes the following:

1. [Company name] will forthwith review, identify, and cease all methods of influencing or dissuading consumers’ quoting, binding or renewal of auto insurance:
 - (i) Cease all related algorithmic rules and instructional messages programmed in proprietary and third-party quoting, binding and operating systems, comparative quoting technology, and sales lead generation technology which are not consistent with [Company name’s] approved underwriting rules on file with FSRA;
 - (ii) Cease all related historical communication or instructions to agents and brokerages by [Company name] or its other representatives, that can result in the obstruction, hindrance, or delay of quoting or binding of consumers qualified to purchase auto insurance under [Company name’s] approved underwriting rules on file with FSRA; and
 - (iii) Cease all related practices and supporting technology that ultimately circumvent the required consumer outcomes intended by the Take-All-Comers Provisions, including proportioned targeting of consumer segments in a manner that is not reflective of the [Company name’s] approved underwriting rules on file with FSRA;
2. [Company name] will forthwith internal monitoring and control procedures to detect, identify, and report to its management, its Board of Directors, and FSRA actual or suspected breaches of the Take-All-Comers Provisions;

3. By February 19, 2022, [Company name] will provide a written report to FSRA regarding its plan to review and remediate any actual or potential non-compliance of the Take-All-Comers Provisions; and
4. By June 30, 2022, [Company name] will provide an audit report to FSRA regarding its compliance with the Take-All-Comers Provisions.

DATED this day of February, 2022.

[Name]
Chief Executive Officer
[Company name]

Appendix V: Unfiled Underwriting Rules and System Messages

The following appendix contains examples of underwriting rules initiated by the insurer and which they requested be implemented into a third-party quoting system. It is important to note that these rules, including insurer-specific underwriting guidelines and system messages prompting brokers when entering customers' personal data into the quoting system, have not been filed with FSRA and are considered non-compliant with the Take-All-Comers requirements.

Insurers Unfiled Underwriting Rules and Instructions to Brokers

\$0 quote

Accept only risks displayed in the "quoting system" as "best quality" or accompanied by a property policy.

Accept risk only if payment for full policy term if 2 or more cancellations for non-payment of funds in past 3 years.

Binding authority for all risks removed for indefinite period beginning September 2018.

Binding authority removed and paper application required for principal operator licensed less than 4 years.

Binding authority removed and paper application required for risks with 2 or more at-fault losses in past 6 years.

Binding authority removed for 4 of 15 GTA markets beginning January 2021.

Binding authority removed for all GTA risks until January 2020.

Binding authority removed for risks displayed in "quoting system" as Refer to underwriter.

Decline risks displayed in "quoting system" as "lower quality" unless accompanied by a property policy

Decline risks displayed in "quoting system" as non-target risk.

Decline risks displayed in "quoting system" as Refer prior to binding due to territory.

Decline risks displayed in "quoting system" as Refer to company.

Decline risks displayed in "quoting system" as Requires Down Payment unless payment is received by credit card only.

Decline risks displayed in "quoting system" as Risk exceeds binding authority.

Decline risk if 1 past auto policy cancellation for non-payment of funds in past 6 years.

Decline risks in the GTA.

Decline risks unaccompanied by a property policy.

Decline risks with a message displayed in "quoting system" as Refer to underwriter unless accompanied by a property policy.

Decline risks with OPCF6D endorsement.

Do Not Bind Application

Non-Target Risk

Paper application required for risks displayed in "quoting system" as Licensed less than 4 years.

Paper application required for risks displayed in "quoting system" as Non-Target Risk.

Refer prior to binding due to territory

Refer to Company

Refer to company with paper application and reports

Risk exceeds binding authority

Appendix VI: Self-Reported Non-Compliant Practices

Summary of Practices Self-Reported by 12 Insurers (not independently validated by FSRA)

