



Financial Services Regulatory
Authority of Ontario



Autorité ontarienne de réglementation
des services financiers

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c.I.8, as amended (the “Act”), in particular sections 237, 238, and 441.3;

AND IN THE MATTER OF Aviva Insurance Company of Canada and S&Y Insurance Company

NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTIES

TO: **Aviva Insurance Company of Canada**
10 Aviva Way, Suite 100
Markham, Ontario, L6G 0G1

S&Y Insurance Company
10 Aviva Way, Suite 100
Markham, Ontario, L6G 0G1

TAKE NOTICE THAT pursuant to section 441.3 of the Act, and by delegated authority from the Chief Executive Officer, **the Director, Litigation & Enforcement, (the “Director”)** is proposing to impose the following administrative penalties:

- (i) **\$150,000 on S&Y Insurance Company for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and April 30, 2022;**
- (ii) **\$150,000 on S&Y Insurance Company for failing to comply with an obligation assumed by undertaking, pursuant to paragraph 441.3(1)(2) of the Act, between February 25, 2022, and April 30, 2022;**
- (iii) **\$150,000 on Aviva Insurance Company of Canada for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and June 20, 2022; and**
- (iv) **\$150,000 on Aviva Insurance Company of Canada for failing to comply with an obligation assumed by undertaking, pursuant to paragraph 441.3(1)(2) of the Act, between February 25, 2022, and June 20, 2022.**

Details of these contraventions and reasons for this proposal are described below. This Notice of Proposal includes allegations that may be considered at a hearing.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SECTIONS 407.1(2), 407.1(3), 441.3(2) AND 441.3(5) OF THE ACT. A hearing by the Tribunal about this Notice of Proposal may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
25 Sheppard Avenue West, 7th Floor
Toronto, ON, M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you, orders will be issued as described in this Notice of Proposal. TAKE FURTHER NOTICE of the payment requirements in section 5 of Ontario Regulation 408/12, which state that the penalized person or entity shall pay the penalty no later than (thirty) 30 days after the person or entity is given notice of the order imposing the penalty, after the matter is finally determined if a hearing is requested or such longer time as may be specified in the order.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal’s website at www.fstontario.ca

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* (“Rules”) made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 extension 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and or other particulars, including further or other grounds, to support this proposal.

REASONS FOR PROPOSAL

I. INTRODUCTION

1. These are the reasons for the proposal by the Director to, pursuant to paragraph 441.3 of the Act, impose four administrative penalties in the total amount of \$600,000:
 - (i) \$150,000 on S&Y Insurance Company (“S&Y”) for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and April 30, 2022;
 - (ii) \$150,000 on S&Y for failing to comply with an obligation assumed by undertaking, pursuant to paragraph 441.3(1)(2) of the Act, between February 25, 2022, and April 30, 2022;
 - (iii) \$150,000 on Aviva Insurance Company of Canada (“AIC”) for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and June 20, 2022; and
 - (iv) \$150,000 on AIC for failing to comply with an obligation assumed by undertaking, pursuant to paragraph 441.3(1)(2) of the Act, between February 25, 2022, and June 20, 2022.

II. BACKGROUND

2. Aviva Canada Inc. (“Aviva”) is an unlicensed corporation. Aviva is the parent company of seven licensed insurers, including AIC and S&Y (together, the “Aviva Group”).
3. AIC and S&Y are both licensed with FSRA as insurers under the Act.
 - (a) **“Take-All-Comers” requirements**
4. Auto insurance is mandatory to operate a vehicle in Ontario.
5. Insurers operating in Ontario are obliged to file their private passenger automobile insurance underwriting rules with FSRA for approval (“Approved Underwriting Rules”). FSRA reviews such filings in accordance with applicable provisions under the Act and its regulations, which include the prohibited factors that an insurer cannot utilize in its underwriting rules. Insurers are legally required to strictly adhere to Approved Underwriting Rules in selling private passenger automobile insurance to consumers or on the renewal of the policies.

6. Insurers providing private passenger automobile insurance through any means of distribution, whether it be brokers or agents, are required by law to provide all Ontario consumers with access to timely auto insurance quotes based strictly on the Approved Underwriting Rules. These requirements, known as the “Take-All-Comers” requirements, are primarily contained in sections 237 and 238 of the Act. The Take-All-Comers requirements include obligations for insurers to:
 - (i) Offer the lowest rate available, in accordance with the insurer’s Approved Underwriting Rules, for each consumer’s circumstances;
 - (ii) Offer consumers a renewal if that consumer continues to meet that insurer’s eligibility rules; and
 - (iii) Accept all auto insurance business from consumers that meets their Approved Underwriting Rules.

7. Since 2020, FSRA has taken enhanced steps to ensure insurer compliance with the Take-All-Comers requirements. In particular:
 - (i) On February 28, 2020, FSRA issued a letter to insurers, including the Aviva Group, requesting self-review and self-reporting of practices not compliant with, or in contravention of, Take-All-Comers requirements.
 - (ii) On November 15, 2021, FSRA issued The Interpretation & Approach Guidance pertaining to Take-All-Comers requirements AU0135INT (the “Guidance”). The Guidance included FSRA’s interpretation of compliance requirements for all insurers offering private passenger automobile insurance in relation to aggregators.
 - (iii) On November 19, 2021, FSRA again sent correspondence to insurers, including the Aviva Group, directing them to “review, identify and cease all methods of influencing or dissuading consumers’ quoting, binding or renewal of auto insurance, either directly or through their broker or agent.” This letter directed insurers to “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 were not consistent with the insurer’s approved underwriting rules”. The letter also stated that the insurers shall (A) “within 90 days, report to FSRA regarding the insurer’s plan to review and remediate potential non-compliance of the Take-All-Comers requirement” (the “90-Day Plan”), and (B) “provide an internal audit report to FSRA covering as information and evidence of compliance with the Take-All-Comers requirement by June 2022” (the “Audit Report”).

- (iv) On February 18, 2022, in accordance with FSRA's requirements set out in the November 19, 2021, letter, Aviva provided its 90-Day Plan to FSRA, which outlined, among other things, the phases and outline of the company-wide review to identify, assess and remediate any potential gaps in compliance with the Take-All-Comers requirements and the Guidance, including a commitment to provide FSRA with the Audit Report by June 30, 2022.
 - (v) By letter dated April 6, 2022, FSRA wrote to the Aviva Group providing Take-All-Comers 90-day Plan Feedback ("Feedback"). The Feedback reinforced FSRA's requirements to take steps to review, identify and cease any non-compliant practices, implement internal monitoring and control procedures, report to FSRA within 90 days, and provide an internal audit report to FSRA by end of June 2022, validating compliance.
 - (vi) The Aviva Group provided responses to such Feedback on May 6, 2022, in accordance with the requested timeline.
 - (vii) On February 25, 2022, at FSRA's request and as part of a sector-wide initiative by FSRA to ensure that consumers were not being disadvantaged by non-compliance with the Take-All-Comers requirements or the Guidance, Aviva's CEO signed an undertaking (the "Undertaking").
8. Among other things, the Undertaking required, either directly by insurers or through their brokers or agents, the cessation of the use of algorithmic rules and instructional messages programmed in third-party operating systems ("Filters"), comparative quoting technology and sales lead generation technology not consistent with Approved Underwriting Rules that had been filed with FSRA by the members of the Aviva Group ("Unapproved Underwriting Rules").
9. The Undertaking specified that it was an "undertaking" as contemplated by paragraphs 441.1(d), 447(2)(c), and 448(1)(b) of the Act.
10. On May 31, 2022, prior to completion of Aviva's 90-Day Plan and submission of its Audit Report, FSRA commenced an investigation of the Aviva Group's compliance with the Take-All-Comers requirements and the Undertaking (the "Investigation").

(b) AIC and S&Y's sales models

11. S&Y offers private passenger automobile insurance directly to consumers. Until April 2022, S&Y made quotes for private passenger auto insurance available via aggregators. Aggregators are intermediaries that operate online platforms providing price comparisons to consumers for automobile insurance. As described below, S&Y ceased all use of aggregator platforms as of April 30, 2022.
12. AIC offers private passenger automobile insurance to consumers via licensed brokers. With the knowledge of AIC, these licensed brokers purchased sales leads from aggregators.

13. In the comparative quoting technology used by aggregators, the rules for whether a quote will be provided could, depending on the platform, be manifested as Filters which restrict the provision of a quote if triggered. Accordingly, Filters should only reflect Approved Underwriting Rules as mandated by the Take-All-Comers requirements.

(c) AIC and S&Y's efforts to comply with Take-All-Comers requirements

14. Following the issuance of the Guidance, the Aviva Group took certain steps to comply with the Take-All-Comers requirements.
15. In particular, in December 2021, the Aviva Group created an executive steering committee comprised of senior leaders from relevant business units and functions responsible for ensuring compliance with Take-All-Comers requirements and the Guidance as well as a working group to review and assess current business practices to ensure that it was in compliance with the Take-All-Comers requirements and the Guidance, with any key findings and related recommendations being escalated to the executive steering committee.
16. On January 13, 2022, S&Y verbally directed all aggregators through which it made quotes available to remove S&Y's participation on their websites.
17. However, due to a contractual requirement, one aggregator continued to generate comparative quotes sought by consumers from S&Y using the aggregator's website until April 30, 2022.
18. On January 26, 2022, the Aviva Group spoke to that aggregator and verbally reinforced the importance of compliance with Take-All-Comers requirements.
19. On or about April 1, 2022, AIC sent a written communication to all brokers confirming this instruction and emphasizing the importance of compliance with the Take-All-Comers requirements and the Guidance.
20. On June 6, 2022, following multiple discussions with its brokers in the first half of 2022, AIC issued correspondence instructing its brokerages to stop using the inclusion of aggregator platforms in connection with providing quotes or soliciting sales leads with comparative quotes, effectively ensuring the use of aggregator filters for private passenger automobile quotes to consumers seeking insurance from brokerages had ceased. Effective June 20, 2022, AIC ceased providing, disclosing or otherwise making available to aggregators, and by consequence any users of aggregators, any quotes, rates, premiums or plans for automobile insurance in Ontario.
21. Accordingly, as of April 30, 2022 and June 20, 2022, respectively, both S&Y and AIC had ceased using aggregators to provide quotes to consumers.
22. On June 30, 2022, the Aviva Group submitted its Audit Report to FSRA, in accordance with the letter to insurers sent by FSRA dated November 19, 2021.

23. Despite these efforts, in certain circumstances, as set out in more detail below, both AIC and S&Y, through third party aggregators, did not satisfactorily comply with FSRA's interpretation of the Take-All-Comers requirements as set out in the Guidance prior to April 30, 2022 and June 20, 2022, respectively.

(d) AIC Quotes not being displayed

24. In limited circumstances, AIC required potential consumers to complete and submit a written application (OAF 1) following receipt of a quote but prior to binding a policy for automobile insurance coverage. This requirement was communicated to aggregators, along with a conditional quote. AIC expected that aggregators would display the conditional quotes to brokers but did not verify whether this was the case.
25. FSRA uncovered through its investigation 201 instances between February 26, 2022 and June 20, 2022 where AIC's quote for private passenger automobile insurance was the cheapest among insurers included in a comparative quote, but was not displayed by aggregators to the brokerages. This was due to the fact that, unbeknownst to AIC, the aggregators did not display the AIC quote where a written application requirement was triggered. Since AIC's quote was not displayed to a brokerage, it could not be offered to a consumer even though it was the lowest rate available.

(e) S&Y Quotes not being displayed

26. As a result of one aggregator continuing to generate comparative quotes sought by consumers using the aggregator's website due to a contractual requirement, this aggregator continued to make use of daily volume limits, as set out in more detail below, which can be characterized as an Unapproved Underwriting Rule until April 30, 2022.
27. S&Y had daily volume limits on the number of sales leads it would purchase from aggregators due to the capacity of its call centre. These volume limits were never filed with FSRA as underwriting rules.
28. In its investigation, FSRA uncovered 616 instances between February 26, 2022 and April 30, 2022 where S&Y's quote for private passenger automobile insurance was the cheapest among various insurers but was not displayed by the aggregators to consumers.

III. CONTRAVENTIONS OR FAILURES TO COMPLY WITH THE ACT

(a) Take-All-Comers Requirements

29. The Take-All-Comers requirements mandate that insurers offer the lowest rate available, in accordance with the insurer's Approved Underwriting Rules, for each consumer's circumstances.

30. The 817 instances in which AIC or S&Y failed to issue a quote to a consumer, despite that quote being the lowest, is a breach of the Take-All-Comers requirements.
31. Section 439 of the Act states that “No person shall engage in any unfair or deceptive act or practice.” The UDAP Rule prescribes activities or failures to act that constitute an unfair or deceptive act or practice.
32. Accordingly, AIC and S&Y’s non-compliance with sections 237 and 238 are an unfair or deceptive act or practice in two manners:
 - (i) Subsection 3(1) of the UDAP Rule states that commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act, is an unfair or deceptive act or practice; and
 - (ii) Paragraph 9(1)(i) of the UDAP Rule prohibits “Unfair treatment by an ... insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance...”.

(b) Breach of the Undertaking

33. The Undertaking states, in part, that as of February 25, 2022, the Aviva Group, which includes AIC and S&Y, will “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 the Company’s approved underwriting rules on file with FSRA.”
34. However, AIC and S&Y did not fully ensure that the Unapproved Underwriting Rule and daily sales lead limits had stopped being used.
35. As a result, AIC and S&Y were in breach of the Undertaking in the 817 instances that a quote was not displayed to a consumer or brokerage and thus was not offered to a consumer even though it was the lowest rate available.
36. The Undertaking is specifically identified as “an undertaking as contemplated by paragraphs 441.1(d), 447(2)(c), and 448(1)(b) of the [Act].” Accordingly, AIC and S&Y’s non-compliance with the obligations set out in the Undertaking is subject to administrative penalties.

IV. GROUNDS FOR IMPOSING ADMINISTRATIVE PENALTIES

37. The Director is satisfied that imposing administrative penalties on AIC and S&Y under section 441.3(1) of the Act will satisfy either of the following purposes under section 441.2(1) of the Act:
1. To promote compliance with the requirements established under the Act.
 2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under this Act.
38. In determining the amount of the administrative penalties, the Director has considered the following criteria as required by section 4(2) of Ontario Regulation 408/12:
1. The degree to which the contravention or failure was intentional, reckless or negligent.
 2. The extent of the harm or potential harm to others resulting from the contravention or failure.
 3. The extent to which the person or entity tried to mitigate any loss or take other remedial action.
 4. The extent to which the person or entity derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure.
 5. Any other contraventions or failures to comply with a requirement established under the Act or with any other financial services legislation of Ontario or of any jurisdiction during the preceding five years by the person or entity.
39. In respect of the **first criterion**, the Director is satisfied that AIC and S&Y's actions were negligent, but were not intentional or reckless. AIC and S&Y are sophisticated licensees with detailed understanding of the Act and their obligations thereunder, including the Take-All-Comers requirements. Furthermore, since 2020 FSRA has taken enhanced steps to ensure insurer compliance with the Take-All-Comers requirements, including correspondence requiring self-review of compliance and the issuance of the Guidance. AIC and S&Y can also be expected to understand the significance of signing an undertaking and the consequences of breaching it.
40. In respect of the **second criterion**, the Director is satisfied that any breach of the Take-All-Comers requirements has the potential to cause financial harm to Ontario consumers directly and through broader harm to the insurance market. Breaches of the Take-All-Comers requirements prevent Ontario consumers from receiving the lowest possible price for automobile insurance.

41. Furthermore, any breach of the Take-All-Comers requirements has the potential to cause harm to the insurance market broadly. Non-compliance with the Take-All-Comers requirements unfairly passes on risk to insurance companies who comply with the rules.
42. In respect of the **third criterion**, the Director has noted that following communication of concerns FSRA's had with respect to their remediation plan, S&Y and AIC fully remediated and corrected all potential non-compliance with the Take-All-Comers requirements and the Guidance by terminating their participation on all aggregator platforms on April 30, 2022, and June 20, 2022, respectively, prior to completion of its 90-Day Plan and submission of the Aviva Audit Report to FSRA. Furthermore, S&Y has determined that it will not enter into agreements to supply quotes through any aggregator, and AIC has determined that it will not permit any broker acting on its behalf to supply AIC quotes obtained from any aggregator unless and until S&Y and/or AIC, as the case may be, have implemented sufficient controls to provide reasonable assurance that no aggregator will withhold any quotation based on any Unapproved Underwriting Rule. In addition, S&Y and AIC have fully cooperated with FSRA's investigation.
43. In respect of the **fourth criterion**, the Director is satisfied that non-compliance with Take-All-Comers requirements can result in an economic benefit to the extent that an insurer does not offer the lowest automobile insurance quote to certain consumers and such a result could be reasonably expected by the insurer.
44. In respect of the **fifth criterion**, the Director is not aware of any other failures to comply with the Act or other financial services legislation during the preceding five years that impact the appropriate amount of the penalties.
45. Such further and other reasons as may come to the attention of the Director.

DATED at Toronto, Ontario July 17, 2023

DocuSigned by:
Elissa Sinha
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Elissa Sinha
Director, Litigation & Enforcement
By delegated authority from the Chief Executive Officer