
IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, as amended (the “Act”), in particular sections 237, 238, 441.2 and 441.3;

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

MINUTES OF SETTLEMENT AND UNDERTAKING

PART I – INTRODUCTION

1. Aviva Canada Inc. (“Aviva”) is an unlicensed corporation. Aviva is the parent company of seven licensed insurers, including Aviva Insurance Company of Canada (“AIC”) and S&Y Insurance Company (“S&Y”) (together, the “Aviva Group”).
2. AIC and S&Y are both licensed with FSRA as insurers under the Act.
3. On July 17, 2023, the Director, Litigation & Enforcement, (the “Director”), by delegated authority from the Chief Executive Officer (“CEO”) of the Financial Services Regulatory Authority of Ontario (“FSRA”), issued a Notice of Proposal in respect of AIC and S&Y (the “NOP”).
4. AIC, S&Y, and the Director, by delegated authority from the CEO, (collectively the “Parties”) wish to resolve this matter on consent and without a contested hearing before the Financial Services Tribunal (the “Tribunal”).

PART II – AGREED FACTS

(a) “Take-All-Comers” requirements

5. Auto insurance is mandatory to operate a vehicle in Ontario.
6. 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.

7. 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.

8. 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, the 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, the Aviva Group 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 re-enforced 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").
9. 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").
10. 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.
11. 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**
12. 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.
13. AIC offers private passenger automobile insurance to consumers via licensed brokers. With the knowledge of AIC, these licensed brokers purchased sales leads from aggregators.

14. 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

15. Following the issuance of the Guidance, the Aviva Group took certain steps to comply with the Take-All-Comers requirements.

16. 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 the 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.

17. 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.

18. 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.

19. On January 26, 2022, the Aviva Group spoke to that aggregator and verbally reinforced the importance of compliance with the Take-All-Comers requirements.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

25. 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.

26. 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

27. 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.

28. 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.

29. 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.

PART III – MITIGATING FACTORS AND REMEDIATION

30. Neither AIC nor S&Y intentionally or knowingly contravened the Take-All-Comers requirements between February 26, 2022, and June 20, 2022, and February 26, 2022, and April 30, 2022, respectively.

31. The Aviva Group provided approximately 5,600,000 quotes for private passenger automobile insurance in Ontario through all distribution channels between February 26, 2022, and June 20, 2022.
32. Following communication of concerns FSRA 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.
33. 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.
34. S&Y and AIC have fully cooperated with FSRA's investigation.

PART IV– NON-COMPLIANCE WITH THE ACT

35. By engaging in the conduct described above in Part II, AIC admits and acknowledges that it breached the Act as follows:
 - (i) Failing to comply with sections 237 and 238 of the Act between November 15, 2021, and June 20, 2022; and
 - (ii) 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.
36. By engaging in the conduct described above in Part II, S&Y admits and acknowledges that it breached the Act as follows:
 - (i) Failing to comply with sections 237 and 238 of the Act between November 15, 2021, and April 30, 2022; and
 - (ii) 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.

PART V – TERMS OF SETTLEMENT

37. AIC and S&Y admit the facts contained in Part II of these Minutes.
38. AIC and S&Y acknowledge and agree that they have been given the opportunity to seek independent legal advice and they have done so and are entering into these Minutes of Settlement and Undertaking (“Minutes”) voluntarily, understanding the consequences of doing so.
39. AIC and S&Y acknowledge that these Minutes are an undertaking within the meaning of the Act, and that failure to comply may result in immediate regulatory action including, but not limited to, the issuance of a Notice of Proposal to revoke the licence, a Notice of Proposal to impose an administrative penalty, or a prosecution under the *Provincial Offences Act*.
40. Prior to re-entering the aggregator market in Ontario, AIC and S&Y shall share with FSRA its processes and controls designed to ensure compliance with the Take-All-Comers requirements and the Guidance, and shall provide confirmation that such processes and controls are effective to ensure compliance with the Take-All-Comers requirements.

(a) Issuance of Order

41. Each of AIC and S&Y acknowledges that, upon execution of these Minutes by both Parties, the order attached as Schedule “A” to these Minutes (the “Order”) will be issued, pursuant to which the following administrative penalties shall be imposed:
 - (i) \$150,000 on 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 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.

(b) Process for Execution of Settlement

42. AIC and S&Y acknowledge that these Minutes are not binding on the Director until signed by the Director.

43. These Minutes may be executed in counterparts, and may be executed and delivered by facsimile or e-mail, and all such counterparts and facsimiles or e-mails, as applicable, shall together constitute one and the same agreement.
44. Upon execution of these Minutes by all Parties, the Parties agree that the Director will issue an Order in the form attached as Schedule "A" to these Minutes.
45. The Parties accept and understand that these Minutes and any rights within the Minutes shall enure to the Parties and to any successors or assigns of the Parties.

(c) Disclosure of Minutes and Order

46. The Parties will keep the terms of these Minutes and the Order confidential until the Order is issued, except that:
 - (i) The Director shall be permitted to disclose the Minutes and the Order within FSRA;
 - (ii) AIC and S&Y shall be permitted to disclose the Minutes and the Order within the Aviva Group and for the purposes of seeking legal advice; and
 - (iii) The Parties shall be permitted to inform the Tribunal.
47. If either of the Parties does not sign these Minutes or the Director does not issue the Order:
 - (i) These Minutes, the Order, and all related discussions and negotiations will be without prejudice to FSRA and AIC and S&Y; and
 - (ii) FSRA and AIC and S&Y will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the NOP. Any proceedings, remedies and challenges will not be affected by these Minutes, the Order, or any related discussions or negotiations.
48. Upon issuance of the Order:
 - (i) AIC and S&Y agree that these Minutes and the Order form part of their administrative record for the purposes of any future licensing decision or as an aggravating factor in respect of a future administrative penalty or prosecution against them or any affiliated entities;
 - (ii) AIC and S&Y acknowledge that these Minutes and the Order are public and will be published by FSRA on its public website (or that of its successor) along with a press release that summarizes these Minutes and the Order; and

- (iii) The Parties agree not to make representations to any member of the public or media or in a public forum that are inconsistent with these Minutes or the Order.

(d) Further Proceedings

- 49. Whether or not the Order is issued, AIC and S&Y will not use, in any proceeding, these Minutes or the negotiation or process of approval of these Minutes as the basis for any attack on FSRA's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may be available.
- 50. Upon issuance of the Order:
 - (i) AIC and S&Y waive all rights to a hearing before the Tribunal regarding the NOP;
 - (ii) AIC and S&Y waive all rights to a judicial review or appeal of the Order;
 - (iii) The Director agrees that FSRA will not take any further proceedings against AIC or S&Y arising solely from the Investigation or the facts contained in Part II of these Minutes, unless facts not disclosed by AIC or S&Y come to the attention of FSRA that are materially different from those contained in Part II of these Minutes or AIC or S&Y fail to comply with any term in the Order; and
 - (iv) AIC and S&Y agree that should they fail to comply with any term in these Minutes or the Order, FSRA is entitled to bring any proceedings available to it.

DATED 7/18/2023 in the City of Toronto, Ontario

Jason Storah
S&Y Insurance Company

Witness
Print name: Michael Price

DATED 7/18/2023

in the City of Toronto

, Ontario

Jason Storah
S&Y Insurance Company

Witness
Print name: Michael Price

DATED in the City of Toronto, Ontario July 19, 2023

Elissa Sinha
Financial Services Regulatory Authority of Ontario
Director, Litigation & Enforcement
By delegated authority from the Chief Executive Officer

SCHEDULE A

IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c. I.8, as amended (the “Act”), in particular sections 237, 238, 441, and 441.3;

AND IN THE MATTER OF Aviva Insurance Company of Canada (“AIC”) and S&Y Insurance Company (“S&Y”).

ORDER IMPOSING ADMINISTRATIVE PENALTIES

AIC and S&Y are both licensed with FSRA as insurers under the Act.

On July 17, 2023, the Director, Litigation & Enforcement, (the “Director”), by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“Chief Executive Officer”), issued a Notice of Proposal to impose administrative penalties as follows:

- (i) an administrative penalty on S&Y for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and April 30, 2022;
- (ii) an administrative penalty 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) an administrative penalty on AIC for failing to comply with sections 237 and 238 of the Act between November 15, 2021, and June 20, 2022; and
- (iv) an administrative penalty 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.

This order is made pursuant to a settlement entered into by AIC, S&Y, and the Director. Therefore, pursuant to section 441.3(7) of the Act, Director makes the following order.

ORDER

The following administrative penalties are hereby imposed, for the reasons set out in the Minutes of Settlement:

- (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.

TAKE NOTICE THAT the Financial Services Regulatory Authority of Ontario will deliver an invoice to Aviva Insurance Company of Canada and S&Y Insurance Company with information as to where and how to pay the administrative penalty. Aviva Insurance Company of Canada and S&Y Insurance Company must pay the administrative penalty no later than thirty (30) days after the date of the order or otherwise agreed.

If Aviva Insurance Company of Canada and S&Y Insurance Company fail to pay the administrative penalty in accordance with the terms of this Order, the Chief Executive Officer may file the Order with the Superior Court of Justice and the Order may be enforced as if it were an order of the court. An administrative penalty that is not paid in accordance with the terms of an order imposing the penalty is a debt due to the Crown and is enforceable as such.

DATED at Toronto, Ontario,

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

Si vous désirez recevoir cet avis en français, veuillez nous envoyer votre demande par courriel immédiatement à : contactcentre@fsrao.ca.