



REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed Financial and Consumer Services Commission Rules CRS-001 *Credit Reporting Licensing and Ongoing Obligations*, CRS-002 *Fees*, and CRS-003 *Credit Repair Agreements and Prohibited Representations* (collectively the “Proposed Rules”).

Introduction

On 18 December 2017, the Financial and Consumer Services Commission (Commission) approved publication in order to obtain comments on the Proposed Rules.

Purpose of the Proposed Rules

The purpose of the Proposed Rules is to support the regulatory framework set out in the *Credit Reporting Services Act* (the *Act*). The *Act* provides for a licensing regime for credit reporting agencies, and imposes standards of practice as well as disclosure obligations on licensees and credit repairers. Rules CRS-001 and CRS-003 specify the requirements which were set out in the *Act*, while Rule CRS-002 establishes the regulatory fees for applicants and licensees.

Request for Comment

The Commission seeks comments on the Proposed Rules.

How to Provide your Comments

Comments are to be provided, in writing, by no later than **5 March 2018** to:

Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 866-933-2222 (within NB only)
Fax: 506-658-3059
E-mail: info@fcnb.ca

We cannot keep submissions confidential. A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

Alaina Nicholson
Acting Director, Consumer Affairs
Financial and Consumer Services Commission
Tel: 506- 444-3156
Email: alaina.nicholson@fcnb.ca

**FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE CRS-001 *Credit Reporting Services Licensing and Ongoing Obligations***

**PART 1
PRELIMINARY MATTERS**

Definitions

1. (1) In this Rule:

“Act” means the *Credit Reporting Services Act*.

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

**PART 2
LICENSING**

Licence criteria

- 2. (1)** Pursuant to subsection 4(2)(c) of the Act, in addition to the requirements set out in subsection 4(2) of the Act, an applicant for a licence to carry on business as a credit reporting agency must provide:
- (a) the applicant’s legal name(s) and business name(s) under which it intends to carry on credit reporting activities;
 - (b) the names, addresses, dates of birth and position held for each officer, director, and partner (if a partnership);
 - (c) where the applicant is an individual or sole proprietor, a five year employment history;
 - (d) the name of an officer or employee who is authorized to provide information requested by the Director and to receive and disseminate information given by the Director;
 - (e) a background check in form acceptable to the Director concerning the following individuals:
 - (i) in the case of a corporation, each director and officer of the corporation;
 - (ii) in the case of a partnership, each partner of the partnership; or
 - (iii) in the case of a sole proprietor, the sole proprietor.

(2) For the purposes of subsection 4(2)(c)(ii) of the Act, the applicant, and each director, officer, partner or sole proprietor of the applicant must indicate on the application whether they:

- (a) have been licensed or registered in any capacity to deal with the public as a credit reporting agency;
- (b) have been subject to discipline from, or are currently the subject of an investigation by, a regulatory body;
- (c) been found liable by a court for misrepresentation or fraud;
- (d) have been convicted of a criminal offence under federal statute, including the *Criminal Code of Canada*, *Income Tax Act (Canada)*, *the Competition Act (Canada)*, *Immigration and Refugee Protection Act (Canada)* and the *Controlled Drugs and Substances Act (Canada)*, not including the exclusions listed in subsection 4(c) of this Rule, for which they have not received a pardon;
- (e) are the subject of a judgment, including a default judgment, in respect of a claim arising out of the business or professional activities in an industry regulated by financial and consumer services legislation in New Brunswick or in any other jurisdiction (which includes but is not limited to securities, insurance, real estate agents and mortgage brokering);
- (f) have any pending legal proceedings against them with respect to their dealings with the public arising out of business or professional activities in an industry regulated by financial and consumer services legislation in New Brunswick or in any other jurisdiction (which includes but is not limited to securities, insurance, real estate agents and mortgage brokering);
- (g) are an undischarged bankrupt; or
- (h) have had a credit reporting licence previously refused, restricted, suspended, revoked or cancelled in another jurisdiction.

Change in circumstances

- 3.** For purposes of subsection 8(2) of the Act, a change in circumstances consists of a change in the information previously provided to the Director in an application for a licence or in any subsequent material change notification under this Rule.
- 4.** For purposes of subsection 8(2) of the Act and the required notification set out in section 3 of this Rule, any of the following constitute material changes in circumstances requiring the licence holder to notify the Director within seven days after the change occurs:
 - (a) any change in legal name(s) or business name(s) of licence holder;
 - (b) any changes to the authority of the licence holder to engage in business or professional activities in an industry regulated by financial and consumer services legislation in New Brunswick or in any other jurisdiction (which includes but is not limited to securities, insurance, real estate agents and mortgage brokering), including a suspension, cancellation, imposition of terms and conditions or other restrictions, or surrendering of a licence to a regulatory authority;

- (c) charges with a criminal offence under federal statutes, including but not limited to the *Criminal Code of Canada*, *Income Tax Act (Canada)*, *the Competition Act (Canada)*, *Immigration and Refugee Protection Act (Canada)* and the *Controlled Drugs and Substances Act (Canada)* or any other offence against any law of any country, province or state, excluding:
- (i) charges for summary conviction offences that have been stayed for six months or more;
 - (ii) charges for indictable offences that have been stayed for a year or more;
 - (iii) offences under the *Youth Criminal Justice Act (Canada)*; and
 - (iv) speeding or parking violations; or
- (d) a civil action or administrative proceeding is brought against the licence holder alleging fraud, breach of trust, deceit or misrepresentation by the licence holder.

**PART 3
CONSUMER RIGHTS**

Credit Reporting

5. For purposes of subsection 17(5) of the Act and the consumer's right to disclosure, every credit reporting agency shall, if a consumer so requests, provide a copy of the credit report and other information referred to in subsection 17(1) of the Act in the form requested by the consumer.
6. Pursuant to subsection 18(6) of the Act, the report required under subsection 18(5) of the Act may be in the form of a notification to the specified end-users that a correction, supplement or deletion to a consumer's credit report has occurred.
7. For purposes of subsection 20(11) of the Act, if a consumer requires a credit reporting agency to include a security alert in the consumer's file, the credit reporting agency shall not require the consumer to pay a fee of more than \$5.00 before the credit reporting agency includes the security alert in the consumer's file.

**PART 4
COMING INTO FORCE**

8. This Rule comes into force on *[Insert Date]*.



FINANCIAL AND CONSUMER SERVICES COMMISSION

RULE CRS-002 FEES

PART 1

PRELIMINARY MATTERS

Definitions

1. (1) In this Rule:

“Act” means the *Credit Reporting Services Act*.

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

PART 2

FEES PAYABLE

2. (1) The fee payable when an application for a licence is submitted to the Director is \$600.

(2) The fees to maintain a licence are payable annually on or before [insert date] in the amount of \$600.

(3) The fee for an exemption application is \$300.

(4) Subject to Part 4 of this Rule, the fees paid for the application for a licence or the annual maintenance of the licence are non-refundable, whether the licence is issued or denied by the Director.

(5) The fees referred to in this Rule are payable to the Commission.

PART 3

RECOVERABLE FEES AND COSTS

3. For a compliance review, the following fees and expenses are recoverable by the Commission under subsection 32(8) of the Act:

(a) \$50 per hour for each employee of the Commission involved in the review;

(b) disbursements properly incurred by the Commission for a compliance review;

- (c) fees paid or payable to an expert;
- (d) disbursements properly incurred by an expert;
- (e) fees paid or payable for legal services; and
- (f) disbursements properly incurred in connection with the provision of legal services.

**PART 4
DISCRETIONARY FEE REDUCTION**

4. Upon application of a licence holder or a person who made an application for a licence, the Director may at his or her sole and absolute discretion grant a refund of a fee paid under Part 2 of this Rule, or such part of the fee as the Director considers fair and reasonable, where:
- (a) an application for a licence is abandoned before work has begun to process the application;
 - (b) an application for a licence is filed in error; or
 - (c) where for reasons beyond the person's control, a person ceases to exercise the business for which the licence is issued.
5. At the Director's sole and absolute discretion, and upon considering it is in the public interest, the Director may order that any fee referred to in this Rule be reduced or not required.

**PART 5
ADMINISTRATIVE FEES**

6. (1) The fee for a copy of a licence is \$25.
- (2) The fee for a cheque or payment refused due to non-sufficient funds or credit is \$25.

**PART 6
EFFECTIVE DATE**

7. This Rule comes into force on *[Insert Date]*.



FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE CRS-003 *Credit Repair Agreements and Prohibited Representations*

PART 1
PRELIMINARY MATTERS

Definitions

1. (1) In this Rule:

“Act” means the *Credit Reporting Services Act*.

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier.

“trade-in allowance” means the greater of,

- (a) the price or value of the consumer’s goods or services as set out in a trade-in arrangement, and
- (b) the market value of the consumer’s goods or services when taken in trade under a trade-in arrangement.

“trade-in arrangement” means an arrangement under which a consumer agrees to sell their own goods or services to the supplier and the supplier accepts the goods or services as all or part of the consideration for supplying goods or services.

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

PART 2
CONSUMER RIGHTS

Credit Repair Agreements

2. (1) Pursuant to section 21 of the Act, a credit repairer must include the following terms and information in the credit repair agreement:

- (a) the name of the consumer;
- (b) the name of the credit repairer and, if different, the name under which the credit repairer carries on business;

- (c) the telephone number of the credit repairer, the address of the premises from which the credit repairer conducts business, and information respecting other ways, if any, in which the credit repairer can be contacted by the consumer, such as the fax number and e-mail address of the credit repairer;
- (d) the names of,
 - (i) the person, if any, who solicited the consumer in connection with the agreement;
 - (ii) the person, if any, who negotiated the agreement with the consumer;, and
 - (iii) the person who concluded the agreement with the consumer;
- (e) an itemized list of the services and goods that the credit repairer is to supply to the consumer, that fairly and accurately describes each service and good;
- (f) as applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur;
- (g) the date by which the credit repairer is to cause a material improvement to the credit report, credit information, file, personal information, credit record, credit history or credit rating of the consumer;
- (h) the total amount payable by the consumer to the credit repairer and the terms and methods of payment;
- (i) the portion, expressed in dollars and cents, of the total amount payable that is attributable to each service or good to be supplied under the agreement;
- (j) the statement set out in subsection (2)
 - (i) which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type; and
 - (ii) which shall appear on the first page of the agreement unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears;
- (k) the date on which the agreement is entered into;
- (l) if the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance;
- (m) the currency in which amounts are expressed, if it is not Canadian currency; and
- (n) any other restrictions, limitations and conditions that are imposed by the credit repairer.

(2) Pursuant to section 21 of the Act, a credit repairer must include the following statement in the credit repair agreement:

Your Rights under the *Credit Reporting Services Act*

If a credit reporting agency maintains a credit file with respect to you, you have the right to dispute with the agency, at no cost to you, the accuracy or completeness of the information about you in its file. You do not need to hire a credit repairer, or anyone else, to exercise this right. If the file contains inaccurate or incomplete information, the credit reporting agency must correct it within a reasonable period of time.

It is an offence for the credit repairer to require or accept payment or security for payment in advance of causing a material improvement to your credit report, credit information, file credit record, credit history or credit rating.

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the credit repairer a reason for cancelling during this 10-day period.

To cancel this agreement, you must give notice of cancellation to the credit repairer. This notification may be provided by way of letter delivered in person or sent by registered mail or prepaid courier, fax, email, or by any other method that can show you gave notice of the cancellation.

If you cancel this agreement, the credit repairer has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

Prohibited Representations

3. (1) Pursuant to section 26 of the Act, the following are prohibited representations in the case of a credit repairer:

(a) An express or implied representation that the credit repairer is approved, licensed or registered by the Government of Canada, the Government of New Brunswick, the Commission or the government or regulator of any other province or territory of Canada ;

(b) An express or implied representation that the operations of the credit repairer are regulated by the Government of Canada, the Government of New Brunswick, the Commission or the government or regulator of any other province or territory of Canada; and

(c) Subject to subsection (2), an express or implied representation that the credit repairer will be able to cause a material improvement to the credit report, credit information, file, personal information, credit record, credit history or credit rating of a consumer.

(2) The representation described in paragraph 3 of subsection (1) is not a prohibited representation if the credit repairer makes the representation after,

(a) examining the consumer's credit report, credit information, file, personal information, credit record, credit history or credit rating; and

- (b) reasonably concluding that the consumer's credit report, credit information, file, personal information, credit record, credit history or credit rating is inaccurate or incomplete and correcting, supplementing or deleting any item of information would cause a material improvement to the consumer's credit report, credit information, file, personal information, credit record, credit history or credit rating.

**PART 3
COMING INTO FORCE**

- 4. This Rule comes into force on [*Insert Date*].