



NOTICE OF ADOPTION

COMMISSION LOCAL RULE CRS-001 CREDIT REPORTING LICENSING AND ONGOING OBLIGATIONS;

COMMISSION LOCAL RULE CRS-002 FEES;

AND

COMMISSION LOCAL RULE CRS-003 CREDIT REPAIR AGREEMENTS AND PROHIBITED REPRESENTATIONS

Introduction

On 16 May 2018, the Financial and Consumer Services Commission (Commission) approved Rule CRS-001 *Credit Reporting Licensing and Ongoing Obligations* (Rule CRS -001), Rule CRS-002 *Fees* (Rule CRS -002), and Rule CRS-003 *Credit Repair Agreements and Prohibited Representations* (Rule CRS-003) (attached as Annex A, Annex B and Annex C respectively).

Pursuant to section 8 of New Brunswick Regulation 2014-18 *Rule-making Procedure Regulation - Financial and Consumer Services Commission Act* (O.C. 2014-21), a rule comes into force on the day the rule is published electronically by the Commission as required under paragraph 57(1)(a) of the *Credit Reporting Services Act*, S.N.B. 2017, c. 27, or on such later date as is specified in the rule.

Each of Rule CRS-001, Rule CRS-002 and Rule CRS-003 will come into effect on **1 October 2018**.

Background

The *Credit Reporting Services Act* (the Act) received Royal Assent on 5 May 2017, and can be proclaimed once the above-mentioned Rules come into force.

On 18 December 2017, the Commission approved publication for comment Proposed Rule CRS-001, Rule CRS-002, and Rule CRS-003, which were published electronically on the Commission web site on 2 January 2018 and in the 17 January 2018 edition of The Royal Gazette for a 60-day comment period. We received comment submissions from 2 individuals and/or organizations. We have considered the comments received and thank all the commenters for their input. A list of commenters and a summary of the comments we received, as well as our responses to the comments are attached as Appendix D and E, respectively. After consideration of the comments received, Staff did not recommend any changes to the Proposed Rules.

On 4 July 2018, the Minister of Justice consented to the making of Local Rule CRS-001, CRS-002 and CRS-003.

Substance and Purpose of Rule CRS-001, Rule CRS-002 and Rule CRS-003

The purpose of Rule CRS-001 *Credit Reporting Licensing and Ongoing Obligations*, Rule CRS-002 *Fees*, and Rule CRS-003 *Credit Repair Agreements and Prohibited Representations* is to provide the regulatory framework to support the Act.

Questions

If you have any questions, please refer them to:

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Contents of Annexes

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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 1 October 2018.



**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 1 October 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 1 October 2018.

Annex C



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 1 October 2018.

Appendix D

List of Commenters

1. TransUnion - Joanna Fitzpatrick
2. Credifax - Rodger D. Noel

ANNEX E

SUMMARY OF COMMENTS AND FCNB RESPONSES AS OF 20 MARCH 2018

Comments on proposed *Credit Reporting Services Licensing and Ongoing Obligations* (the Proposed Licensing Rule)

General Comments on Licensing Rule

<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
Support for regulations	One commenter supported the rules for the <i>Credit Reporting Services Act</i> , for the following reasons: <ul style="list-style-type: none"> • They believe it promotes a fair, accurate and reliable credit reporting system in New Brunswick and they appreciate the consultative process FCNB instituted as a result of the Credit Reporting Services Act. 	FCNB thanks the commenters for their support.
<u>Exemptions</u>		
Exemptions for Commercial Reporting Agencies	One commenter stated that an exemption should be granted, without request, to Commercial Credit Reporting Agencies, who are involved in B2B credit services.	The Act only applies to consumers (being natural persons acting for personal, family or household purposes) and does not apply to commercial or business purposes. Credit reporting for commercial or business purposes is not addressed in Act, therefore not applicable.

<u>Comments Related to Act</u>		
Section 17 Disclosing copies of Written Reports to Consumers	One commenter suggested that Subsection 17(1) of the Credit Reporting Services Act is particularly problematic. The commenter advises that the majority of large credit grantors have computerized systems that interact with the commenter's computerized systems in order to receive raw data. This raw data provided through system to system access is not in a format that could be understood by the consumer and is not possible to provide a copy in this exchange in a consumer friendly format or even in a legible format. They believe that there is no added benefit to providing consumers a copy of this raw data as the consumer would be confused and not be able to check the information for accuracy. Furthermore, a credit report received by a credit grantor differs from the 'consumer disclosure' provide to consumers, as credit grantors do not receive information concerning non-credit related inquiries.	This is related to interpretation of the requirements under the Act. It is not the intent to have raw data and computer code disclosed, rather the information contained within that report in a legible format. No change to the Act required.
Section 10 Contact Information in Consumer Files	One commenter suggested that it was unclear from reading subsection 10(4)(c) whether the intent of this provision is to require credit reporting agencies to include in a consumer disclosure the address and telephone number for the data supplier of every piece of information included in a consumer's credit file. The commenter advised that to include address and phone number information for all information in a consumer disclosure would cause consumers to have more information than they need in a document that is already extremely long and full of more relevant information.	This relates to interpretation of the requirements under the Act. The Act states that the requirement is to keep the contact information recorded in the file, not disclosed in the credit report. No change to the Act required.
Section 9 Credit information to Third Party	One commenter advised that the wording of section 9(1)(c)(ii) stating that a credit reporting agency may only provide information from its files "to a third party by an end-user who has obtained...the consent of the consumer to the release of the credit report to the third party' is very unclear. The commenter questioned if collection agencies will be precluded from obtaining credit information directly from the credit reporting agencies when they are collecting debt owed by the consumer. The commenter requests clarification. The commenter also suggests that the Act be amended or regulations be created allowing credit reporting agencies to provide credit information to collection agencies where the collection agency is requesting this information for the purpose of collecting on a debt owed by the consumer. The commenter also suggested that the Act be amended to be consistent with the requirements under PIPEDA.	FCNB thanks the commenter for raising this issue and it is being considered as to how this limited permissible purpose may be addressed to align with practice in other jurisdictions.

Section 18 Amended Credit Reports to End Users	A commenter referred to subsection 18(5) and recommended that it be amended to require that the credit reporting agencies provide notice to end-users of any amendments made to a consumer's file as the result of an investigation. By providing the end user with notification of change, rather than the consumer's credit report, the end-user is aware that there has been a change.	This relates to interpretation of the requirements under the Act. No change to the Act required.
Section 10 Reporting Multiple Bankruptcies	A commenter suggested that the Act substantially deviates from all other consumer reporting legislation by setting separate retention periods for second bankruptcies. In other provinces, consumer reporting legislation sets the retention periods for single bankruptcies, but does not impose retention restrictions on parties that have been bankrupt more than once and the the legislation is silent regarding maximum retention period for reporting multiple bankruptcies. The commenter suggested that when reporting multiple bankruptcy information it is done in a manner that is consistent with all other Provinces.	FCNB thanks the commenter for raising this issue and it is being considered as to how this reporting requirement may be addressed to align with practice in other jurisdictions.
Section 30 Seven Year Retention and Six Year Limitation Periods	One commenter relayed concerns with both sections 30(4) and section 51 of the Act regarding retention of records and the time period for commencement of proceedings under the Act. Under Principle 5 of PIPEDA, organizations that collect, use or disclose personal information are required to only retain that personal information for a period necessary to fulfill the purpose of which is was collected. Their internal process is much less than 6 or 7 years as there is no reason to maintain them any longer. The 6 year limitation period for bringing a proceeding against a credit reporting agency places onerous burden on credit reporting agencies to maintain all record for a period of 6 years to prepare for the chance that a preceding may be brought against it in that time period.	The requirements under the Act with respect to records retention aligns with other acts under the regulatory authority of FCNB and no change will be made to the Act at this time.
Credit Reporting Services Act	One commenter was pleased to see that the <i>Credit Reporting Service Act</i> recognizes the distinction and has clearly defined the consumer. However the commenter feels that the Act fails to distinguish that its mandate is to legislate and regulate the consumer credit industry, and suggested that the <i>Act</i> be renamed as the <i>Consumer Credit Reporting Services Act</i> .	The defined terms clearly indicate that the consumer is a natural person and that this Act does not apply and no change is required to the name of the Act.
Credit Reporting Agency	One commenter believes that the definition of Credit Reporting Agency fails to make the distinction between consumer credit reports. The commenter suggested that the definition of Credit Reporting Agency should be amended as it suggested that commercial credit reporting industries would need to be licenced as well.	The Act only applies to consumer credit report and not commercial, therefor no change to the Act is required as the Commission is not licensing commercial credit reporting agencies under this legislation.

Comments on the proposed CRS-002 Fees (the Proposed Fee Rule)

<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
Section 3 Recoverable Fees Costs and	One commenter requests that section 3 of the Rule CRS-002 Fees be removed in its entirety. They believe that there is no precedent for charging credit reporting agencies for the costs of an FCNB investigation. They also suggest that credit reporting agencies would be forced to bear the full costs of FCNB driven investigations.	We reviewed the licensing fees from jurisdictions across Canada and determined that the fees are consistent with other regulatory fees. Compliance review costs may be sought by the Commission on a case-by-case basis, based on the circumstances of the review.
Section 2 Fees Payable	One commenter referred to the Nova Scotia Consumer Reporting Act and the annual fee of \$35 compared to the New Brunswick proposed \$600	We reviewed the licensing fees from jurisdictions across Canada and determined that though the fee is higher than that in Nova Scotia, it is consistent with regulatory fees in this industry in other jurisdictions.
Fees for Security Alert	One Commenter agrees that the \$5 fee to add security alerts to a consumers credit file is on par with industry.	FCNB thanks the commenters for their support.