



NOTICE OF ADOPTION

COMMISSION LOCAL RULE CDSS-001 *DEBT SETTLEMENT SERVICES*

Introduction

An Act to Amend the Collection Agencies Act received Royal Assent on 5 May 2017, which, once proclaimed, will create the *Collection and Debt Settlement Services Act* (the Act).

On 16 May 2018, the Financial and Consumer Services Commission (Commission) approved Rule CDSS-001 *Debt Settlement Services* (Rule CDSS -001) which is attached as Annex A.

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 12(1)(a) of the Act, or on such later date as is specified in the rule.

Rule CDSS-001 will come into effect on **1 October 2018**.

Background

On 18 December 2017, the Commission approved publication for comment Proposed Rule CDSS-001 *Debt Settlement Services*, which was 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 one comment submission from 1 individual and/or organization. A list of commenters and a summary of the comments we received as well as our responses to the comments are attached as Annex B and C, respectively. After consideration of the comments received, Staff did not recommend any changes to the Proposed Rule CDSS-001.

On 4 July 2018, the Minister of Justice consented to the making of Local Rule CDSS-001.

Substance and Purpose of Rule CDSS-001

The Act can be proclaimed once the Rule CDSS-001 comes into force. Rule CDSS-001 specifies requirements regarding standards of practice and disclosure obligations on licensees which support the regulatory framework set out in the Act.

Questions

If you have any questions, please refer them to:

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**FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE CDSS-001 *Debt Settlement Services***

**PART 1
PRELIMINARY MATTERS**

Definitions

1. (1) In this Rule:

“Act” means the *Collection and Debt Settlement 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
DEBT SETTLEMENT SERVICES AGREEMENT**

Prohibited Representations

- 2. (1)** Pursuant to section 9.01 of the Act, a collection agency or collector is prohibited from communicating or causing to be communicated any representation relating to a debt settlement services agreement that:
- (a) restricts the debtor from having access to his or her credit report, or make any oral or written representation suggesting that the debtor is restricted from having such access;
 - (b) restricts the debtor from communicating with his or her creditors;
 - (c) provides debt settlement services under a name other than the collection agency’s or collector’s registered name;
 - (d) provides information about a debtor’s debts to any person except the debtor, a guarantor of the debt, the debtor’s designated representative or a creditor of the debtor without the debtor’s written consent;
 - (e) misrepresents the time needed to achieve the results promised by the collection agency or collector; or
 - (f) gives any person false or misleading information.

Debt Settlement Services Agreement

- 3. (1)** Pursuant to subsection 9.02(1)(a) of the Act, a collection agency must include the following terms and information in the debt settlement services agreement with the debtor:
- (a) The first page of the agreement shall be the document entitled “Settling Debt—What You Need to Know” which is available on the Commission’s website;
 - (b) The name, address and telephone number of the debtor and information respecting other ways, if any, in which the debtor can be contacted by the collection agency, such as an e-mail address;
 - (c) The collection agency’s registered name, principal business address in New Brunswick, telephone number, and information respecting other ways, if any, in which the collection agency can be contacted by the debtor, such as the fax number and e-mail address of the collection agency, as well as website address if available;
 - (d) The date on which the agreement was entered into;
 - (e) The proposed termination date of the agreement, together with the statement that the termination date is subject to the rule specified in subsection 2;
 - (f) An itemized list of all services that will be provided under the agreement;
 - (g) The details of all the debts to which the agreement applies, including each creditor’s name, the total amount owed to each creditor and the interest rate applicable to each debt;
 - (h) The total amount owed by the debtor to all creditors under the agreement;
 - (i) Any restrictions, limitations and conditions under the agreement;
 - (j) The date and signature of the debtor, the collection agency and the collector who dealt with the debtor at the time the agreement was signed;
 - (k) The total amount payable by the debtor to the collection agency and the terms and methods of payment; and
 - (l) 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.
- (2)** Unless a termination provision set out in the agreement provides for an earlier termination date, the agreement terminates 18 months after the later of,
- (a) the date the agreement was entered into,
 - (b) the last day on which a payment was made in connection with the agreement, or
 - (c) if any debts to which the agreement applies are settled by or through the collection agency, the last day on which such a settlement occurred.
- (3)** The collection agency must inform a debtor’s creditors that the collection agency or collector is authorized to arrange or negotiate a schedule of payments or a one-time payment on the debtor’s behalf, within 15 days of becoming authorized.

Amending, renewing or extending agreement

- 4. (1)** A debt settlement services agreement may be amended, renewed or extended whether or not the agreement provides for amendment, renewal or extension by the express agreement of the debtor and collection agency.
- (2)** If a debt settlement services agreement is amended, renewed or extended, the debtor may, without any reason, cancel the agreement at any time from the date that the amendment is agreed to until 10 days after receiving the written copy of the amended agreement, and sections 9.06 and 9.07 of the Act apply to the cancellation.
- (3)** No amendment, extension or renewal of a debt settlement services agreement is effective unless the amendment, extension or renewal agreement meets all the requirements in the Act and this Rule.
- (4)** An amendment to a debt settlement services agreement does not retroactively affect rights and obligations acquired by the debtor before the effective date of the amendment, and does not affect any debt that has already been settled under the agreement.
- (5)** Unless a termination provision set out in the agreement provides for an earlier termination date, the agreement terminates 18 months after the later of,
- (a) the date the agreement was entered into;
 - (b) the last day on which a payment was made in connection with the agreement; or
 - (c) if any debts to which the agreement applies are settled by or through the collection agency, the last day on which such a settlement occurred.

Restrictions on payments for services

- 5. (1)** Pursuant to section 9.03(2) of the Act, a collection agency or collector shall not require or accept any payment or security for payment for its services in advance of providing the services in respect of a debt owed by a debtor to a creditor until,
- (a) the debtor and the collection agency have entered into a valid debt settlement services agreement in accordance with the Act and this Rule;
 - (b) the debtor has entered into an agreement with the creditor regarding the amount to be paid by the debtor to the creditor to settle the debt;
 - (c) the debtor has made at least one payment under an agreement mentioned in clause (b); and
 - (d) the collection agency has written evidence of the debtor's payment mentioned in clause (c).
- (2)** If a collection agency provides debt settlement services to a debtor in respect of more than one creditor, the collection agency shall not require or accept payment or security for payment for its services in respect of any given creditor until the conditions mentioned in subsection 1 have been met in respect of the creditor.

(3) For purposes of subsection 9.03(2) of the Act, the maximum amount that may be collected from debtor as payment or security must not exceed

- (a) in the case of a debt settlement agreement that includes a schedule of payments, the greater of
 - (i) 15% of the money actually collected from the debtor for distribution to his or her creditors; and
 - (ii) \$20; or
- (b) in the case of a one-time payment to a creditor or creditors, or an agreement to make arrangements or negotiate on the debtor's behalf with the creditor or creditors identified in the debt settlement agreement, 10% of the debt owing.

**PART 3
COMING INTO FORCE**

5. This Rule comes into force on 1 October 2018.

Annex B

List of Commenters

1. Quebec Consumer Protection - Patrick Trudeau

ANNEX C

SUMMARY OF COMMENTS AND FCNB RESPONSES

AS OF 15 MARCH 2018

Comments on proposed *RULE CDSS-001 Debt Settlement Services* (the Proposed Licensing Rule)

<u>General Comments on Licensing Rule</u>		
<u>Issue</u>	<u>Restrictions</u>	<u>Responses</u>
Section 5 Restrictions on payments for services	<p>One commenter stated in the proposed section 5(3) in CDS-001 that the maximum amount that can be recovered from a debtor, in the case of a debt repayment agreement with payment maturities, is a percentage amounts actually paid by the debtor. While it makes sense to limit the fees to a percentage of the amounts actually paid as opposed to, for example, amounts that must be paid, we question the conflict of interest that this rule creates. In fact, the more the merchant receives money from the debtor, the more he is entitled to high fees. This rule does not encourage it to negotiate strongly for the benefit of the consumer. Although this rule has been adopted in all Canadian jurisdictions that have legislated the maximum fees that may be charged to the consumer, we submit that this approach may be unfavorable to the consumer. Although the rule has been adopted in all Canadian jurisdictions that have legislated the maximum fees that may be charged to the consumer, we submit that this approach may be unfavorable to the consumer.</p>	<p>FCNB considered the commenter’s information and determined that it will remain consistent with other jurisdictions. FCNB will stay abreast on any industry changes in this area.</p>