



7 February 2022

Corporate Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2

secretary@fcnb.ca

Re: Rule INS-001 Insurance Intermediaries Licensing and Obligations

Introduction

CADRI appreciates the opportunity to comment on the New Brunswick Finance and Consumer Services Commission's (FCNB's) proposed Rule INS – 001 (the proposed rule.)

The publishing of the proposed rule is a milestone in a process launched some years ago to first modernize the *Insurance Act* and then to enable the regulator to enact rules. CADRI appreciates the sizeable collective effort undertaken by the province to move to a more flexible, responsive regulatory regime. We embrace the intent of the proposed rule to ensure that insurance companies provide New Brunswick residents with trustworthy, well-informed, -trained and -supervised agents and adjusters to serve their insurance needs.

CADRI generally endorses a principles-based, risk-based, and outcome-focused approach to regulation, including:

- Regulatory resources focused on the marketplace risks with the greatest impact and likelihood.
- A principles-versus rules-based approach allowing organizations to innovate and to meet regulatory intent at lower costs.
- A focus on consumer benefits encouraging affordability, innovation, and competition.

Our members are national companies who employ licensed agents in several jurisdictions. The licensing structure in the proposed rule could pose complications to members' operations. We acknowledge and support the proposed rule's potential for exempting employed agents and the Superintendent's ability to waive licensing qualifications for non-resident agents. However, in this submission, we will note several challenges to transitioning to the proposed three-level licensing regime and implementing it.

Our members are also focused in the immediate term on the change management process. We would prefer that an agent's current licence be grandfathered into the proposed system. However, we understand that the province intends to review all licences when the proposed regime comes into effect and replace them with what they consider to be the appropriate licence. If true, the process sounds lengthy and adds uncertainty for the agent and the insurer. It has the potential to displace agents into lower licence levels and cause issues related to the proposed supervisory requirements, outlined further below. There are parallel concerns where it applies to adjusters.

The proposed rule

Looking at specific sections of the proposed rule, CADRI has the following observations, comments and recommendations.

Part 1. Definitions and interpretation

“level 1 general insurance agent” means an individual who is authorized to act as a general insurance agent for all personal lines of insurance;

“level 2 general insurance agent” means an individual who is authorized to act as a general insurance agent for all personal and commercial lines of insurance;

“level 3 general insurance agent” means an individual who is authorized to act as a general insurance agent for all personal and commercial lines of insurance and is authorized to manage an insurance agency;

In Ontario, the “Other than Life” (OTL) Insurance course and exam prepares an agent to conduct business with both personal and commercial insurance lines. Other provinces also incorporate commercial lines into their qualifying exams without added requirements. Limiting the ability to conduct commercial insurance activities to a Level 2 licensee, or higher, will be problematic for CADRI members' agents as they will need additional educational requirements (specifically the Insurance Institute's C130 and C131 courses). In the best of conditions, let alone the current pandemic, the timeline for an agent to complete these two courses, while working full time, can take three years.

CADRI members are also struggling with the province's rationale for creating the Level 3 licensing class and having it apply across the industry to direct-relationship insurers, whose employees only sell their own insurance policies to customers, as well as to more independent brokers, that offer customers a choice among different insurance companies' policies. The elimination of the distinction between agents and brokers, and the additional qualifications inherent for Level 3, represent a new burden for insurance companies and agents with ambitions to progress to more senior positions and manage their peers.

Considering processing delays for applications and renewals

4. (3) An officer or employee who has been refused a license, or whose licence has been suspended, revoked or cancelled, shall not act as provided in subsection (1) without written authorization from the Superintendent.

CADRI members understand the province's desire to ensure that only credible, trustworthy people serve New Brunswickers' insurance needs. We wonder, though, whether there may be a gap where an agent, who is otherwise in good standing, is waiting for a new licence or the renewal of a licence and that this individual may inadvertently be caught by this provision, as drafted.

Part 2. General Insurance Agents

Licensing qualifications and educational requirements – general insurance agents

Our members' aim is to be able to get non-resident agents, who are licensed in their home province, quick and easy approval to service New Brunswick customers.

4. (1) Unless the Superintendent directs otherwise, the requirement to be licensed does not apply to an individual acting for an insurer or reciprocal or inter-insurance exchange in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer or exchange may lawfully undertake, if the individual:

(a) is an officer or salaried employee of a licensed insurer, who does not receive commissions;

6. (3) The Superintendent may waive some or all of the requirements for a licence, if an applicant satisfies the Superintendent that the applicant has:

(a) equivalent licensing qualifications and educational requirements based on education, training and experience;

(b) been issued a substantially similar licence in another jurisdiction; or

(c) engaged in equivalent or comparable work in the insurance industry.

18 (2) An applicant without an existing level 1 general insurance agent licence shall have completed all the educational requirements within 24 months prior to submitting the licensing application, unless the applicant held a licence equivalent to a level 2 general insurance agent, or higher level licence in another jurisdiction within the 5 years prior to submitting the licensing application.

The proposed rule in s. 4(1) states that the requirement to be licensed in New Brunswick does not apply to an individual acting for an insurer that is an employee. At s. 6(3), the proposed rule states that the Superintendent may waive some or all the licence requirements if the applicant had the equivalent licensing and education requirements or has been issued a similar licence in another jurisdiction.

We support the Superintendent's ability to waive certain criteria. However, s. 6(3) raises the question as to whether s. 4 applies across the board. We recommend that there is clarification to ensure that it is understood that an employed agent, with a valid licence in another province, will be approved for one in New Brunswick.

Looking also at s. 18(2), our members seek clarification as to whether existing and new Ontario resident OTL licence holders will be granted Level 2 licences, as no equivalency exists. We note that in British Columbia, which has a similar three-level system, Ontario OTL licence holders are granted a Level 2 licence without having to complete additional educational requirements.

In addition, the 24-month deadline for completing all the educational requirements may be restrictive in the case of an absence from the workplace i.e. a life event like caregiving or health leave.

Supervision – level 1 and level 2 general insurance agents

CADRI is very pleased to see that the proposed rule eliminates the requirement for Level 1 agents to work in a specified location.

The COVID-19 pandemic accelerated many trends, including that many insurance companies, including our members, moved most of their workforce home, to work safely, securely and remotely. This includes those once working in customer care or call centres. We believe that many of these employees and exclusive agents will continue to work a good deal of time remotely, even when the pandemic finally subsides.

Working remotely is not only safe for employees and secure for customers but allows our members to hire from a wider pool of potential applicants on an ongoing basis – particularly people who live outside urban centres and may be multilingual or from Indigenous communities.

Following is a link to a video that demonstrates our members' approach to supervision. Through it one can conclude that supervisors are well placed to oversee the work of their teams, without touching every decision. Please view this video, "Supervising agents in a virtual offices"¹: [CLICK HERE](#)

"Supervising agents in virtual offices" spells out that agents are screened before they are hired and complete up to three months of formal facilitated training. While on the job, they receive ongoing coaching and skills upgrading; must demonstrate self-sufficiency and develop a strong record for underwriting and productivity.

Supervision has many safeguards. Agents have full access to all the insurers' systems and data, and daily transactions are VPN secured. Employees have direct access to supervisors, colleagues and IT allowing them to do their jobs efficiently and effectively while meeting regulatory requirements.

¹ The video cites New Brunswick as requiring agents to work in an office. That barrier would now be eliminated. British Columbia and Manitoba have also announced processes to examine this requirement.

Part 1 – Definitions & Interpretation

“supervision” means reasonable and prudent oversight of all insurance activities carried on by the individual being supervised; (supervision)

Part 2 – General Insurance Agents

23. The supervisor of a level 1 or a level 2 general insurance agent has the following responsibilities:

- (a) provide appropriate instruction consistent with the type of activity conducted by the person being supervised;
- (b) provide reasonable and prudent supervision of the insurance activities of the person being supervised;
- (c) review and approve all insurance business of the person being supervised; and
- (d) documenting the review and approval through countersignatures or notations in paper or electronic systems.

24. (1) An individual who is required to be under supervision shall not conduct any insurance activities without a supervisor.

(2) The supervisor shall be acceptable for the position.

In the context of demonstrating our members’ thorough hiring, training, performance review and supervisory regimes, one can better understand CADRI members’ concerns about the proposed rule’s supervisory requirements in s. 20 – 21 and s. 23 – 25.

We suggest that the province consider our members’ general oversight practices and take a more principle-based approach to the sections of the proposed rule specifying what constitutes supervision. The definition of supervision in Part 1 could be sufficient on its own to serve the public interest. However, this position does not exclude separate submissions from our members to eliminate the definition and reword several clauses accordingly.

Given the robust controls insurance companies have in place to protect consumers’ interests, defining in detail the responsibilities of a supervisor, is unnecessary and possibly even counterproductive. We believe that companies should be able to outline the degree and variance of supervision based on the employees’ and exclusive agents’ training, tenure, and responsibilities.

There are several other factors in the proposed rule which could be refined to better reflect insurers' workplace practices. Given the supervisory requirements of the proposed rule, a non-resident agent performing the same task in other jurisdictions would encounter a completely different process in serving customers in New Brunswick. Moreover, the framework does not reflect the fluid nature of scheduling customer-facing agents. As happens in other jurisdictions, a supervisor is not always linked to any one employee but is responsible for a cohort when they are on shift. Given the robust hiring, internal training, coaching, skills upgrading, and other compliance practices outlined in the video and summarized above, approving each and every policy change by Level 1s as set out in 23 (c) and (d) is not common practice. The proposed approach will necessitate the re-allocation of resources and has the potential to slow business operations, increase wait times and lead to decreased customer service to our members' New Brunswick policy holders.

We recommend that the province delete s. 23 (c) and (d), the requirements that supervisors review, countersign and annotate all Level 1 and Level 2 decisions, and s. 24.

22. The Superintendent may waive the requirement for supervision or reduce the duration of supervision where the level 1 or level 2 agent has been licensed in another jurisdiction within the previous 24 months.

The ability to request a waiver, or have it automatically generated, for non-resident agents would alleviate some of the issues outlined above. However, those difficulties would remain for employees living in New Brunswick and those who do not qualify for the waiver.

In addition, when considering a non-resident licence application, if an agent has been licensed over 12 months elsewhere, eliminating the supervision period would alleviate process delays.

Part 7. Claims Adjusters

Licensing qualifications and educational requirements – adjusters

Adjusters working as employees for a large, pan-Canadian insurance company are subject to similar standards of hiring, internal training, corporate compliance, and oversight as agents. They should not be subjected to provincial or territorial licensing requirements. This has been proven to be successful in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Saskatchewan.

We recommend that the exemption from licensing proposed under s. 4(1) for agents should be extended to adjusters.

Supervision – adjusters

64.

(1) A level 1 assistant adjuster shall be supervised by a level 3 senior adjuster, or a level 2 adjuster who has held this licence for at least 12 months.

(2) The supervisor is responsible for:

(a) the oversight of the general conduct of the person being supervised;

(b) reviewing and approving all claim reports and settlement offers of the person being supervised;

(c) documenting the review and approval through countersignatures or notations in paper or electronic systems;

(d) providing the Superintendent, when requested, with information with respect to the person being supervised.

65. (1) An individual who is required to be under supervision shall not conduct any insurance activities without a supervisor.

Notwithstanding our preference that employee adjusters are not licensed, we have previously applauded the province's simplification of licensing levels which eliminate specializations and mandatory progression from one level to another in a prescribed timeframe.

Our reception to the proposed rule's adjuster regime, particularly as it pertains to the detailed supervisory regime outlined, resembles our comments above relative to agents. We believe there is an opportunity to amend the clauses above while balancing the province's legitimate objective to protect the consumer and allowing companies to innovate and effect efficient processes. **In this context, we recommend the deletion of the s. 64. (2) (b) and (c) and s. 65 (1).**

A literal interpretation of s. 65 (1) could mean that administrative tasks such as confirming a client's file number would need to be done by a supervisor.

Part 11. Market Conduct

Through CADRI and individually, CADRI members worked with the Canadian Council of Insurance Regulators (CCIR) to refine CCIR's Conduct of Insurance Business: Fair Treatment of Customers. In addition, CADRI has frequently called on regulators to harmonize their rules, regulations, and codes so that pan-Canadian insurers can focus on fair treatment of customers holistically rather than reviewing and complying to different rules in Canada's 13 provincial and territorial jurisdictions.

Use of personal information

81.

(1) An insurance intermediary and those acting on its behalf shall only collect and use personal information that is necessary to carry out an insurance transaction, appropriate for the fulfillment of the service or product provided or a related purpose and shall only keep the personal information as long as necessary or required by law.

(2) An insurance intermediary shall take all necessary and appropriate measures as required by applicable privacy legislation to protect the personal information.

(3) An insurance intermediary shall notify the Superintendent, without delay, of unauthorized or otherwise non-compliant access, collection, use or disclosure of personal information collected by the insurance intermediary and the steps the insurance intermediary is taking to address the issue.

(4) On the request of the Superintendent, an insurance intermediary shall disclose information requested by the Superintendent, including personal information collected by the insurance intermediary.

That said, CADRI refers FCNB to the comments of The Co-operators relevant to deleting sections s. 81(1), (3) and (4) and the redundancy of these clauses considering the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA).

Part 12. Duty to report

91. An adjuster, agent, special insurance broker or applicant for an adjuster, agent or special insurance broker licence shall report to the Superintendent within 10 days of any of the following: ...

(g) any errors and omissions claim against the licensee or applicant.

92. A designated representative of an adjusting firm, agency, managing general agent or restricted insurance representative shall notify the Superintendent in a form provided by the Superintendent within 10 days of: ...

(g) any errors and omissions claim against the licensed firm or any licensed individual acting on behalf of a licensed firm;

Our members do not recall having to report any errors and omissions claim against agents or firms in other jurisdictions. We would be interested in understanding the rationale for this requirement since it does not exist elsewhere. If there is not material cause for its inclusion, **we would recommend deleting s 91. (g) and 92 (g).**

General timelines for insurer-regulator updates

As CADRI has submitted previously, the province is reasonable in wanting agents and their employer companies to submit information changes to the regulator in a timely fashion. However, considering the size of the companies involved and human nature, many of the deadlines for submitting information to FCNB are unrealistic -- even with modern electronic communications. We suggest that submitting much of the information within a month i.e. 30 days is more reasonable.

Please see Appendix 1 for relevant references.

Conclusion

In sum, CADRI appreciates the opportunity to comment on the proposed rule. We welcome that it comprises what was once six different regulations.

We seek a smooth transition to the new regime to agents we hire from New Brunswick.

Additionally, as national companies who employ licensed agents in several jurisdictions, our members' aim is to be able to get non-resident agents, who are licensed in their home province, quick and easy approval to service New Brunswick customers.

In examining the proposal our concerns relate to the uncertainty raised by transitioning from the current regime to the new one, without broadly understood and applicable criteria. The sense that each licensee will be reviewed, case-by-case, raises a lot of uncertainty for both the employee and the insurer.

Given the robust hiring, internal training, coaching and skills upgrading practices available to our members' agents, the necessity for a supervisor to review and annotate various Level 1's and adjusters' transactions seems prescriptive and has the potential to slow members' response times to their customers.

Finally, eliminating the varied durations under Duties to report would ensure greater ability to meet the requirements.

We welcome your questions on these matters.

Yours sincerely,



Geoffrey Beechey
Chair and CEO, CADRI

CADRI comments on New Brunswick Rule INS-001

cc:

CADRI Board of Directors

CADRI Atlantic Committee

CADRI Licensing Task Force

CADRI Market Conduct Task Force

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Appendix 1 – Timelines

Renewal of Licence

7. (3) The Superintendent will not accept an application to renew a licence submitted 30 days after the expiration of the licence.

Termination of sponsorship

11. (1) An insurer who terminates sponsorship of a licensed person shall provide written notice and reasons for such termination to the Superintendent within **15 days** of termination of sponsorship.

Supervision – level 1 and level 2 general insurance agents

24. (3) An individual who is required to be under supervision shall report a change in supervisor to the Superintendent within **10 days** of the change in supervisor.

Supervision – adjusters

65. (3) A level 1 adjuster shall report a change in supervisor to the Superintendent within **10 days** of the change in supervisor.

Change of designated representative

80. (1) If the designated representative of a licensed firm or a restricted insurance representative ceases to be the designated representative, the licensed firm or restricted insurance representative shall:

(a) notify the Superintendent in writing and provide reasons for the change within **10 days**; and
(b) provide, within **20 days**, the name of a new candidate who meets the requirements to be the designated representative and provide any additional information required by the Superintendent to determine the candidate's suitability to be the designated representative.

(2) The licence of a licensed firm or a restricted insurance representative that does not submit a new candidate within **20 days** is automatically suspended.

PART 12 – DUTY TO REPORT

90. An adjuster, agent or special insurance broker shall report any change to the licence holder's name or contact information to the Superintendent within **10 days** of any change to the licence holder's name or contact information.

91. An adjuster, agent, special insurance broker or applicant for an adjuster, agent or special insurance broker licence shall report to the Superintendent within **10 days** of any of the following: (a) any criminal charge or conviction for an offence under any jurisdiction involving theft, fraud, forgery, breach of trust, misrepresentation, perjury, furnishing of false information, conspiracy to commit any of these offences, carrying on any regulated business or career while not licensed or crimes of violence or moral turpitude; (b) any investigation commenced, disciplinary action taken, or decision rendered by a regulatory or professional body;

(c) any filing in bankruptcy or filing of a consumer proposal;

(d) any change in other employment or business activity;

(e) any change in adjusting firm or agency;

(f) any civil actions commenced, or decision rendered in relation to financial activities, fraud or breach of trust;

(g) any errors and omissions claim against the licensee or applicant.²

² We recommend deleting this requirement altogether.

92. A designated representative of an adjusting firm, agency, managing general agent or restricted insurance representative shall notify the Superintendent in a form provided by the Superintendent within **10 days** of:

- (a) a change in name of the licensed firm or restricted insurance representative;
- (b) a change of ownership of the licensed firm or restricted insurance representative;
- (c) a change in address of the main office or any branch office;
- (d) the departure of any licensed individual, including where an individual is terminated, retires or leaves for any other reason;
- (e) any misconduct by any individual related to the business of the licensed firm or the insurance business of a restricted insurance representative;
- (f) any investigation commenced, disciplinary action taken, or decision rendered by a regulatory or professional body;
- (g) any errors and omissions claim against the licensed firm or any licensed individual acting on behalf of a licensed firm;³
- (h) any errors and omissions claim related to the insurance business of a restricted insurance representative or any employee of the restricted insurance representative;
- (i) any civil actions commenced, or decision rendered in relation to financial activities, fraud or breach of trust; or
- (j) any criminal charges or conviction against the licensed firm or restricted insurance representative or against a director, officer or partner of the licensed firm or restricted insurance representative involving theft, fraud, forgery, breach of trust, misrepresentation, perjury, furnishing of false information, carrying on any regulated business or career while not licensed or crimes of violence or moral turpitude.

93. A designated representative of a managing general agency that has reasonable grounds to believe that an agent is not suitable to carry on business, shall, within **15 days** from the date on which the designated representative becomes so aware, notify the insurer or insurers on whose behalf the agent acts that it believes that an agent is not suitable.

³ We recommend deleting this requirement altogether.