

March 30, 2023

Mr. Robert Picard, Director, Insurance (Acting);  
Ms. Catherine Haines, Deputy Director – Licensing; and  
Mr. David Weir, Senior Technical Advisor Insurance  
Insurance (Division)  
Financial and Consumer Services Commission of New Brunswick  
Andal Building, 225 King Street  
Fredericton, New Brunswick E3B 1E1

**Re: CAFII Follow-up Letter Re FCNB Implementation Of Rule INS-001, Including Official Written Request For 90-Day Extension Beyond Existing May 1/23 Deadline For Obtaining Initial RIR Licence In New Brunswick**

Dear Robert, Catherine, and David:

CAFII thanks FCNB for the licensing portal modification it recently granted to assist our member companies and other industry players, regarding the Director Disclosure section of the Restricted Insurance Representative (RIR) licence application – with respect to OSFI-regulated and FCNB-regulated entities not having to file criminal record checks for members of the Boards of Directors of parent banks/FIs – as communicated in Catherine's March 9/23 reply email to our Association, which was received with relief and gratitude by our members.

This follow-up letter has three purposes:

- to communicate an official CAFII written request for a 90-day extension beyond the existing May 1/23 deadline for relevant/affected insurance businesses to obtain their initial RIR licence in New Brunswick under Rule INS-001, via the FCNB licensing portal;
- to serve as a transmittal for our communication of a follow-up "Summary of Problem Issues/Difficulties Being Encountered By CAFII Member Companies In Applying For A Restricted Insurance Representative (RIR) Licence Via The FCNB Licensing Portal" (see Appendices A, B, and C below); and
- to alert you to a new issue of concern with respect to Rule INS-001 which our member companies have recently brought to our attention: one related to the Rule's trust account provisions (see Appendix D below).

**Deadline Extension Request**

With the May 1/23 deadline (90 days after Rule INS-001's in-force date of February 1/23) fast approaching for relevant/affected insurance businesses to secure their initial RIR licence, in order to be compliant with the Rule, CAFII member companies are still encountering problem issues and difficulties on the FCNB licensing portal, which are impeding and frustrating their efforts to do so.

See Appendices A through C below for a "Summary of Problem Issues/Difficulties Being Encountered By CAFII Member Companies In Applying For A Restricted Insurance Representative (RIR) Licence Via The FCNB Licensing Portal."

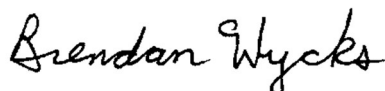
Because the problems and hurdles highlighted therein remain unresolved at this time, CAFII specifically requests that FCNB grant a 90-day extension – which request is made under the assumption that the identified licensing portal difficulties can be resolved to FCNB's and the industry's mutual satisfaction by May 1/23 – which would see July 31/23 become the new deadline for applying for and securing an initial RIR licence. We view a 90-day extension as being a reasonable and modest request under the current time-pressured circumstances; and we hope to hear back from you at your earliest convenience with an indication that the FCNB has seen fit to grant this request.

Thank you, in advance, for considering and responding to the deadline extension request and related Rule INS-001 concerns advanced in this letter; and for giving these matters the urgent attention warranted. CAFII and its members look forward to hearing back from you at your earliest convenience.

Sincerely,



Keith Martin  
Co-Executive Director



Brendan Wycks  
Co-Executive Director

### About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Insurance; National Bank Insurance; RBC Insurance; Scotia Insurance; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Tire Bank; Chubb Life Insurance Company of Canada; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Securian Canada; and Valeyo.

## Appendix A

### Summary of Problem Issues/Difficulties Being Encountered By CAFII Member Companies In Applying For A Restricted Insurance Representative (RIR) Licence Via The FCNB Licensing Portal

| <u>Issue</u>  | <u>Description</u>  | <u>Proposed Solution (If Identified)</u>  |
|---|---|---|
| "Open date" of bank/financial institution branches        | Our bank has dozens of branches in New Brunswick, some relatively new, some which have moved multiple times, and some which may have been in place for decades. There simply is not an easy way of even estimating the open date of every branch.                                 | We are requesting the ability to "grandparent" the branches in place now and give them all an "open" date of February 1, 2023, being the date on which Rule INS-001 came into effect. We will be able to add in accurate opening dates of branches opened or relocated in the future. |
| <b>Page 16</b> – Designated Representative                | Seems difficult to submit/upload a criminal record check, as a field/functionality for doing so does not seem to be provided.<br><br>See <b>Appendix B</b> screen shot below.   |   |
| <b>Pages 17 and 18</b> – Regulatory and Licensing Details | We are unsure as to what FCNB means/intends by "insurance licence" (does it include the RIA licences that we have in AB, SK, and MB)? What does home jurisdiction mean: the province in which our bank's head office is located?<br><br>See <b>Appendix C</b> screen shots below. |   |

## Appendix B

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### Designated Representative

Please provide the name and contact information for the designated representative for the Agency, Adjusting Firm, Managing General Agent or Restricted Insurance Representative.

Please review the Designated Representatives section (Part 10) of Rule INS-001 to confirm that the selected individual meets the requirements. The designated representative for an Agency, Adjusting Firm or Managing General Agent will require an appropriate New Brunswick Insurance licence. While the designated representative for a Restricted Insurance Representative does not require an Insurance licence, they must submit a disclosure form and criminal record check with the application.

Name \*

Position within organization

Address \*

## Appendix C

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### Regulatory and Licensing Details

Please provide the details of any insurance licence(s) that the firm currently holds or has held in any jurisdiction, including New Brunswick.

Please provide details of insurance licences held (current and past). If the firm has held a licence for several years, please only include the initial issue year and the current expiry date. E.g., the firm held an Insurance agency licence in British Columbia, first issued in January 2018 and expiring in January 2023.

- ☐ My home jurisdiction does not currently require an insurance licence for an Agency, Adjusting Firm, Managing General Agent, or Restricted Insurance Representative.
- ☐ The firm does not currently hold an insurance licence in any jurisdiction
- ☐ The firm has never held an insurance licence in any jurisdiction.

Please provide details of your insurance licensing in all jurisdictions\*

Add

Jurisdiction ↑

Home jurisdiction

Licence Type

Issued In

Expires In

There are no records to display.

Has the firm ever been licensed or registered, in any jurisdiction to deal with the public in a capacity, other than insurance?

☒ No ☐ Yes

Has the firm ever had any type of registration or licensing to deal with the public refused, restricted, suspended, revoked or cancelled?

☒ No ☐ Yes

Has the firm ever been disciplined, or are you aware that the firm is currently the subject of an investigation by a regulatory body?

☒ No ☐ Yes

## Regulatory and Licensing Details

Please provide the details of any insurance licence(s) that the firm currently holds or has held in any jurisdiction, including New Brunswick.

Please provide details of insurance licences held (current and past). If the firm has held a licence for several years, please only include the initial issue year and the current expiry date. E.g., the firm held an insurance agency licence in British Columbia, first issued in January 2018 and expiring in January 2023.

- ☐ My home jurisdiction does not currently require an insurance licence for an Agency, Adjusting Firm, Managing General Agent, or Restricted Insurance Representative.
- ☐ The firm does not currently hold an insurance licence in any jurisdiction
- ☐ The firm has never held an insurance licence in any jurisdiction.

Please provide details of your insurance licensing in all jurisdictions\*

Add

Jurisdiction ↑ Home jurisdiction Licence Type Issued In Expires In

There are no records to display.

Has the firm ever been licensed or registered, in any jurisdiction to deal with the public in a capacity, other than insurance?

☒ No ☐ Yes

Has the firm ever had any type of registration or licensing to deal with the public refused, restricted, suspended, revoked or cancelled?

☒ No ☐ Yes

Has the firm ever been disciplined, or are you aware that the firm is currently the subject of an investigation by a regulatory body?

☒ No ☐ Yes

## Appendix D

It is CAFII's understanding that CLHIA will be raising and discussing this issue around Rule INS-001's "trust account" provisions with FCNB in a meeting that has been arranged for April 11, 2023. While CAFII is content to have CLHIA be the industry emissary and discussant with FCNB on the industry's concerns about those provisions, our Association did want to summarize our members' viewpoints on the "trust account" provisions, in writing, via this letter.

The "trust account" provisions in FCNB's Rule INS-001 read as follows:

*"trust money" means all monies or other consideration received or receivable by any licence holder in the course of carrying on insurance business: (a) from the public on behalf of insurers; or (b) from insurers on behalf of the public. (fonds en fiducie)*

*99. A licence holder that receives trust money shall, within two days, remit the trust money to the person entitled to the money or deposit the money into a trust account.*



101. An agent, agency, restricted insurance representative, special insurance broker, or managing general agent is not required to have a trust account if all of the following are satisfied:

- (a) all trust money or other consideration received from the public is deposited directly into the insurance company's account within two days of receipt;
- (b) the agent, agency, restricted insurance representative, special insurance broker, or managing general agent is not able to access the trust money after it has been deposited into the insurance company's account;
- (c) the agent, agency, restricted insurance representative, special insurance broker, or managing general agent does not receive trust money from insurers on behalf of the public.

If the definition of "trust money" is interpreted to include premiums collected by a restricted license holder (bank) from its customers with respect to a creditor's group insurance policy, this appears to indicate that the money must be paid to the insurer within two days or else it must be placed in a trust account. Similarly, if "trust money" includes benefits payments made by an insurer to a bank with respect to a creditor's group insurance policy, it must be paid to the account of the insured person within two days or else be deposited into the trust account.

While a "two day deposit" happens for the most part with regard to claims payments, the general process with premiums is that they are collected from various insureds throughout the month by the bank but only submitted to the insurer once per month. This might therefore be an issue and technically require the bank to establish a trust account for that premium money.

The plain words of sections 99 and 101 and the definition of "trust money" can be interpreted as including premiums collected by a bank restricted insurance representative (RIR) from its customers with respect to a creditor's group insurance policy, and that the money must be paid to the insurer within two days or else it must be placed in a trust account (same analysis for receipt of benefits/payment of claims).

However, there is an unresolved question as to whether banks can comply with these provisions because Section 412 of the *Bank Act* (Canada) prohibits banks from acting as a trustee of a trust (e.g. trustee of a trust account). Section 412 states:

*Restriction on fiduciary activities*

**412 No bank shall act in Canada as**

- (a) an executor, administrator or official guardian or a guardian, tutor, curator, judicial adviser or committee of a mentally incompetent person; or
- (b) **a trustee for a trust.**

Federal insurance companies are also subject to the same restrictions in Section 466 of the federal *Insurance Companies Act* (Canada).

FCNB could respond to this concern by saying that Section 101 allows banks to avoid holding premiums in trust by depositing the premiums into the insurer's bank account within two days.

However, that may not be operationally feasible, given how premiums are collected and processed from thousands of loans payments from clients (this is an operational question for each bank to decide).

In any event, it is important to point out that consumers whose premiums are collected by a bank RIR and deposited into the bank's general account are ultimately in the same position as consumers whose premiums are collected by a non-bank RIR and deposited into a trust account held at a bank (i.e. the non-bank RIR is the trustee of the account).

In both cases, the ultimate risk to the consumer is the same, being the credit-worthiness/solvency of the bank.

For that reason, it's possible that the FCNB did not have a bank RIR in mind when drafting these sections.

It's more likely that the FCNB had non-bank RIRs in mind because it makes sense to require a non-bank RIR to hold the premiums in a trust account at a bank (i.e. again, the non-bank RIR is the trustee of the account) to protect the funds from a trustee in bankruptcy in the event of the RIR's bankruptcy. In that scenario, the only risk to the funds held in the bankrupt non-bank RIR's trust account would be the ultimate credit-worthiness/solvency of the bank itself.

Therefore, by way of comparison, premiums collected by a bank RIR and deposited into the bank's general account are at no greater risk - the risk is the ultimate credit-worthiness/solvency of the bank itself.