

Regulatory Statement

Application for Consent to Continue a Credit Union to the Federal Credit Union Regime

Regulatory Statement Number	CU-17-001
Legislation:	<i>Credit Union Incorporation Act</i>
Date:	January 1, 2017
Distribution:	All British Columbia Credit Unions

PURPOSE

This Regulatory Statement (“Statement”) outlines the application process through which a credit union may obtain consent from the BC Financial Services Authority (“Authority”) and the Credit Union Deposit Insurance Corporation (“CUDIC”) to continue from the jurisdiction of British Columbia (“BC”) to the federal jurisdiction, where it would be governed by the *Bank Act* and any other applicable federal laws.

This Statement includes:

- an overview of legislative requirements;
- application prerequisites;
- BCFSA’s role in the Special Resolution process;
- information requirements for the application to BCFSA and CUDIC;
- review criteria; and
- submission instructions.

BACKGROUND INFORMATION

BCFSA and CUDIC treat a credit union’s decision to apply for consent to continue from the provincial to the federal regulatory jurisdiction as a decision of the credit union’s Board of Directors (“Board”) and its members.

In fulfilling its mandate to protect depositors from undue loss and unfair market conduct and to maintain stability within the BC credit union sector, members of the Authority and the CUDIC Board will consider a number of factors which include, but may not be limited to, whether:

- the continuation of the credit union to the federal regime is contrary to the credit union members’ interests;
- the credit union’s members are provided the requisite information upon which to make their decision; and
- the continuation of the credit union to the federal regime will negatively impact the BC credit union system or its depositors.

BCFSA’s and CUDIC’s interest is in effectively discharging their mandates to protect BC credit union depositors and maintain the stability of the BC credit union system. Until a credit union receives consent to continuation from both the Authority and the CUDIC Board, and Letters Patent from the federal Minister of Finance, it remains regulated under the laws of BC and subject to BCFSA’s supervisory standards and assessments toward the deposit insurance fund held by CUDIC.

Classification: **Public**

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While this Statement provides explicit direction to credit unions on the requirements in respect of a continuance application, the particular circumstances of each application are unique and additional information may be required.

LEGISLATION

Pursuant to [Section 15.2](#) of the *Credit Union Incorporation Act* (“CUIA”), a credit union may apply to the federal Minister of Finance for an instrument of continuance allowing the credit union to continue as if it had been incorporated under the laws of the federal jurisdiction. Prior to making this application, a credit union must be authorized by:

- a Special Resolution of its members;
- the consent given by the Authority and CUDIC, and;
- the laws of the federal jurisdiction.

REQUIREMENTS

Step One: Application Requirements

Prior to submitting an application to BCFSa and CUDIC, a credit union is expected to:

- provide 30-day written notice to BCFSa that the credit union intends to begin the pre-application process with the Office of the Superintendent of Financial Institutions (“OSFI”) to continue to the federal regime;¹
- complete the pre-application process as set out by OSFI (receipt of an Expectations Letter (Phase I) is required);
- pass a Resolution of its Board to put forward a Special Resolution to its membership seeking approval for the credit union to apply to OSFI for continuance into the federal regime; and
- pass a Special Resolution to apply to OSFI for continuance into the federal regime, with two-thirds of the voting membership’s approval.

30-day notice of intention to apply to OSFI

Choosing to continue from the provincial to the federal regulatory regime is a rigorous process that requires significant time and resource commitments from the credit union and necessitates extensive engagement with provincial and federal regulators, system stakeholders, and members.

The notice of intention must be received by BCFSa 30 days prior to the date on which the credit union has decided to first approach OSFI to discuss a proposed application for continuance. This notification period provides BCFSa with the opportunity to ensure that the credit union is in a financial position to undertake the continuance process without causing undue harm to its members or creating instability in the BC credit union system.

Completion of OSFI pre-application and receipt of an Expectations Letter

As noted in its Instruction Guide, OSFI’s pre-application process (Phase I) is intended to identify any fundamental issues that should be considered by a prospective applicant before its formal (Phase II) application, including any significant prudential or policy concerns.²

Resolution of the Board to put forward a Special Resolution to members

BCFSa and CUDIC expect a credit union’s Board to carefully examine the results of OSFI’s Expectations Letter in order to determine whether or not it is prudent for the credit union to seek approval from its membership to continue to the federal regime.

^{1, 2} [OSFI Instruction Guide: Guide for Continuing a Local Cooperative Credit Society as a Federal Credit Union.](#)

Special Resolution vote by members

BCFSA expects the credit union not to communicate to members (including employees) the specific merits or details of continuing as a federal credit union until:

- its Board has approved a final business case and made a decision to seek membership approval based on that business case;
- the credit union has completed the pre-application stage with OSFI; and
- the communication plan, key messages, and materials leading to a Special Resolution vote by members have been reviewed by BCFSA and CUDIC.

Step Two: Special Resolution Process

In providing its consent to a continuance application, the Authority and the CUDIC Board want to be assured that the credit union's members had all material information upon which to support an informed decision.

The CUIA requires that a notice of Special Resolution is placed before the credit union's members. An effective notice must include information about how a federal continuance would affect each member individually and the credit union generally; as owners of the credit union, members should be informed as to how such a change will affect their interests and those of the credit union. BCFSA and CUDIC expect member communication materials to include a thorough discussion on the benefits and risks of a continuance and the impact of the federal regulatory regime on the voting rights of members and governance of the credit union.

BCFSA and CUDIC expect all information and materials reviewed by the Board to support its decision to pursue the application, and all materials related to employee and member engagement be submitted to BCFSA and CUDIC for review prior to the credit union placing any communication before its employees and members. This includes:

- copies of all Board-related approvals with respect to a continuance application, and all materials presented to the Board at the time of its decision to proceed to a member vote on continuance;
- all member communications, including:
 - a draft Special Resolution;
 - a notice of Special Resolution;
 - a full member voting package including, but not limited to:
 - a Board statement, including its rationale for recommending a federal continuance;
 - a notice under the federal Disclosure on Continuance Regulations (Federal Credit Unions); and
 - information on the regulatory consents and processes involved for making a federal continuance application;
 - any other communications planned for members; and
 - copies of all materials related to employee engagement;
- copies of all materials which support statements made to the membership, including the credit union's proposed business plan as a federal credit union;
- confirmation that the credit union's Board has reviewed and approved all member communication materials; and
- information on the methods used for voting and how the voting will be administered.

BCFSA and CUDIC expect a high level of engagement and transparency between the credit union and its members and employees. A credit union should pay special attention to the commitments articulated in its member communications to ensure that they do not contradict the credit union's business case or future business plans.

BCFSA and CUDIC staff will begin their review upon receipt of the requested documentation in full. At the time that documents related to the Special Resolution are submitted for review, BCFSA staff will request additional information from the credit union about its risk management framework, including liquidity and capital projections and stress testing, to ensure the credit union has fully accounted for potential risks during the continuance process and has mitigation strategies in place.

Step Three: Authority and CUDIC Board Consent Process

In the event that the Special Resolution is passed by its members, a credit union may proceed to apply to BCFSA and CUDIC for consent to continue out of BC and into the federal jurisdiction. At a minimum, the Authority and CUDIC Board will consider the questions below based on the requested information.

Is the continuation of the credit union to the federal regime contrary to the members' interests?

- a business case for seeking continuance, including:
 - rationale for continuance, supported by a comprehensive list of risks and benefits to the credit union and its owners (members);
 - the strategy for the credit union as a federal entity, including a discussion of opportunities, target markets, and key business lines;
 - discussion on impacts to members' rights and services;
 - discussion of all key continuance risks associated with continuing as a federal credit union and mitigation of these risks; and
 - expected costs to be incurred during the continuance process and costs that are anticipated in preparation to continue to the federal regime (i.e. costs incurred to meet federal requirements while still a BC credit union);
- a contingency plan including:
 - planning and risk management for capital and liquidity risk; and
 - planning and risk management in the event the credit union does not receive regulatory approval for a federal continuance; and
- discussion on why the credit union believes it will be successful in obtaining federal approval to continue, why it will be successful as a federal credit union, and how its continuance to the federal regime will impact the BC credit union system.

Have the credit union's members been provided full and fair disclosure upon which to make their decision?

- a statement of vote results, including a statement from the vote administrator verified by the credit union Board Chair;
- a copy of the member voting package; and
- a summary of voter engagement efforts and communications through the vote campaign.

What impact will the continuation of the credit union have on the BC credit union system and its depositors?

- discussion on how the credit union will conduct itself in the BC marketplace as a federal credit union, including its proposed name; and
- a system impact assessment, prepared by Central 1 Credit Union ("Central 1"), based on the current regulatory framework in place at the time of application, and within the current Rules of Central 1 at the time of application. It is the credit union's responsibility to advise Central 1 of its intention to apply for consent.

On the date that BCFSA and CUDIC staff acknowledge a complete application from a credit union, a notice will be posted on the BCFSA and CUDIC websites notifying the public that the credit union has applied for consent to continue from the BC jurisdiction to the federal jurisdiction. The public will have 30 days to provide comments directly to BCFSA and CUDIC that may be considered in the recommendations put forward to the Authority and CUDIC Board.

Step Four: Review Criteria

In assessing an application, BCFSA and CUDIC staff will consider the criteria set out by the Authority and CUDIC Board to ensure that:

- the continuation of the credit union to the federal regime is not contrary to the credit union members' interests;
- the credit union's members are provided full and fair disclosure of information upon which to make their decision; and
- the continuation of the credit union to the federal regime will not negatively impact the BC credit union system or its depositors.

In the course of their review, BCFSA and CUDIC staff may request additional information from the applying credit union in order to appropriately assess the application.

Following the review, BCFSA staff will present a recommendation to the Authority and CUDIC staff will present a recommendation to the CUDIC Board regarding the credit union's application. The Authority and CUDIC Board may request additional information and may request that a credit union appear before the Authority and/or CUDIC Board.

Consent from BCFSA and CUDIC for continuance may be subject to a time limitation as determined by the Authority and/or CUDIC Board.

INSTRUCTIONS

To make an enquiry or to request a meeting with BCFSA staff in respect of an application, please contact Statutory Approvals at statapprovals@bcfsa.ca or at (604) 398-5034.

All notices, information or documentation referenced in this Statement may be submitted via the [Integrated Regulatory Information System](#) ("IRIS"), a secure portal through which regulated entities may provide information to BCFSA. IRIS, as well as [instructions](#) on how to set up an account and submit an application through IRIS, may be accessed on BCFSA's website.

As the BC Financial Services Authority, we issue Regulatory Statements outlining how entities must operate, or the form and content required by the Regulator for mandatory regulatory filings identified in the Financial Institutions Act and Credit Union Incorporation Act, Regulations, and other pertinent legislation. While the comments in a particular part of a Regulatory Statements may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, instructions, definitions, and positions contained in a Regulatory Statements generally apply as of the date on which it was published, unless otherwise specified.