
BULLETIN NUMBER:	CU-18-002
TITLE:	CONSENT TO CREDIT UNION ACQUISITION: APPLICATION REQUIREMENTS
LEGISLATION:	<i>CREDIT UNION INCORPORATION ACT</i>
DATE:	April 2018
DISTRIBUTION:	ALL BC AUTHORIZED CREDIT UNIONS

PURPOSE

This Information Bulletin (Bulletin) outlines the application process by which a credit union may obtain consent from the Financial Institutions Commission to acquire another credit union and continue as a single credit union.

This Bulletin includes:

- application prerequisites;
- consent application process and required documentation;
- communications requirements; and
- application submission instructions.

INTRODUCTION

Section 16 of the *Credit Union Incorporation Act* (CUIA) outlines the legislative requirements of a business acquisition whereby one credit union may acquire the assets and liabilities of another credit union after which the transferring credit union ceases to exist.

Pursuant to Section 16 of the CUIA, a credit union may acquire another credit union provided that:

- the Commission consents to the proposed Asset Transfer Agreement;
- the members and other equity shareholders of the transferring credit union authorize the transaction by Special Resolution(s); and
- the executed Asset Transfer Agreement and certified Special Resolution(s) are filed by the British Columbia Registrar of Companies (the Registrar).

The Commission must consent to the acquisition prior to the presentation of the proposed transaction to members.

The Financial Institutions Commission's (FICOM) mandate includes protecting depositors and maintaining stability within the credit union sector of British Columbia. When assessing an application to undergo an acquisition, FICOM staff will consider the following:

- evidence that the Boards of both credit unions have considered all available strategic options prior to the determination to seek consent for acquisition;
- that the continuing entity will function well as a going concern and continue to meet supervisory expectations;
- the continuity and quality of services that will be provided to members during the transition to a single entity;
- the fulsomeness and transparency of the communications to members of each credit union involved and the level of engagement with members; and
- the potential impact of the transaction on the credit union system.

FICOM expects a credit union considering an acquisition to meet with FICOM staff prior to submitting an application for consent.

APPLICATION FOR CONSENT TO ACQUISITION

Applications submitted to FICOM should contain the following materials:

- payment of fee of one per cent of assets up to \$5,000 maximum as per Section 2(1) of the *Financial Institutions Fees Regulation* to the CUIA;
- Asset Transfer Agreement that meets the requirements set out under Section 16 of the CUIA;
- business case that includes the following information:
 - proposed corporate (legal entity) structure;
 - proposed governance structure (Board and senior management composition);
 - strategy;
 - member services and product offerings;
 - assessment of impact on operations and detailed analysis of key risks facing the new entity;
 - key internal control and risk policies including internal capital targets, investment policies, and lending/credit policies;
 - financial model including key assumptions, detailed breakdown of costs, demonstration of value of proposed acquisition (quantitative and qualitative measures), sensitivity analysis, and all working papers; and
 - financial assessment including consolidated financial statements, budget, and capital and liquidity projections.

- independent due diligence review conducted by each credit union that is signed by the Chair of the Board:
 - rationale for the acquisition;
 - detailed analysis of strategic options and exploration of potential drawbacks that could result from the transaction;
 - supporting documentation such as reports written by third party experts; and
 - review of the other credit union including analysis of differences in risk appetite and tolerances;
- draft copies of the Notice to Members and Special Resolution(s);
- all other communications, along with confirmation of Board approval of same, and member and employee engagement strategies for each credit union; and
- individual share valuations conducted on investment shares including an opinion and supporting report from an individual or firm accredited in business valuation.

While this Bulletin provides direction to credit unions on the requirements of an application for consent, the particular circumstances of each application may necessitate additional criteria or information.

COMMUNICATIONS TO MEMBERS

If the Commission consents, the transferring credit union must then submit the Asset Transfer Agreement to its members for approval by Special Resolution.

If the credit union has issued any class of equity shares in addition to its membership equity shares, then the proposed Asset Transfer Agreement must be submitted to holders of each class for approval by a separate Resolution.

The Commission expects a high level of transparency and engagement between the credit unions and their members and employees. FICOM considers robust member engagement to be indicative of strong corporate governance and will consider the level of each credit union's engagement with membership when assessing the application.

Under Section 16 of the CUIA, the acquired credit union must obtain the membership's approval of the transaction; however, the Commission expects all involved credit unions to provide fulsome information regarding the transaction to members. All information and materials must be reviewed by the Board and submitted to FICOM for review prior to being placed before members or employees. This may include marketing materials accompanying the Notice to Members, communications plan and engagement strategy, internal communications and Notice provided to creditors.

Each credit union should pay particular attention to the commitments articulated in the communications to stakeholders to ensure that they do not contradict the Asset Transfer Agreement or strategic plans.

Notice to Members

Section 78(1) of the CUIA provides that a credit union must give at least 18 days notice of each Special Resolution to every member of the credit union and to the Superintendent.

An effective Notice to Members must include information sufficient for members to make an informed vote and should clearly state that the membership is being asked to vote on approving an acquisition. As owners, members should be informed as to how such a change will affect their interests and that of the credit union. At a minimum, the Notice should include the following information:

- key provisions of the Acquisition Agreement;
- the proposed Resolutions;
- benefits and risks of the transaction to the members;
- the services that will be provided to members by the new entity and the date of commencement;
- costs directly attributable to the acquisition including disclosure of management incentives and severances;
- confirmation that all deposits will continue to be insured under the Credit Union Deposit Insurance Corporation;
- the governance structure of the new corporate entity;
- a copy of the Letter of Consent issued by the Commission;
- how the voting will be conducted under the CUIA and the credit unions' Rules; and
- instructions to members should they wish to request additional information or ask questions.

A copy of the full Asset Transfer Agreement must be made available to members as an attachment to the Notice, online, or via the branch network. The Board may include a statement in support of the transaction separately in the Notice package; however, the Notice must be the most prominent communication.

Communications to stakeholders must not imply that the Commission has approved the merits of the transaction or considers it to be in the best interests of any credit union or its members. The Commission may conduct a public consultation prior to making a decision.

Notice to Members of Special Rights to Redeem Equity Shares

If a credit union proposing to dispose of its assets to another credit union has issued a class of equity shares other than membership shares, it must provide notice to each shareholder declaring their right to redeem their shares under Section 24(2) of the CUIA. If a shareholder exercises his or her right of redemption, the shares must be redeemed at the fair market value deemed under the Asset Transfer Agreement.

Upon approval by the membership of the Resolution(s), the Asset Transfer Agreement may be executed. The transferring credit union must deliver three copies of each Resolution and the executed Asset Transfer Agreement to FICOM. The Commission will certify the Resolution(s) and deliver them along with the Asset Transfer Agreement to the Registrar for filing. A filing fee of \$275 is to be remitted to the Registrar care of FICOM at this time.

TIMELINE AND SUBMISSION INSTRUCTIONS

All notices and materials referenced in this Bulletin, as well as any enquiries, must be made to FICOM care of:

Statutory Approvals, Financial Institutions Division
2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6

Email: statapprovals@ficombc.ca

Cheques rendered in respect of payment of fees due to FICOM or the Registrar should be made payable to the Minister of Finance and be submitted to FICOM at the aforementioned address.

FICOM staff will begin their review of an application upon receipt of the requested documentation in full. Please reference [Information Bulletin FI-18-001 – Timelines for Statutory Approvals Applications](#) for a timeline for this application. Please note however that the timeline serves as a general guideline, and the efficiency with which a review of an application is completed is dependent upon the completeness and quality of the information submitted and the complexity of the transaction. Submitting credit unions should be aware that subsequent information requests may be made and that this may extend timelines for a consent decision.

At the Financial Institutions Commission, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Financial Institutions Act* and *Credit Union Incorporation Act*, Regulations and other pertinent legislation. While the comments in a particular part of an information bulletin 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, an interpretation or position contained in an Information Bulletin generally applies as of the date on which it was published, unless otherwise specified.