

Regulatory Statement

Consent to Credit Union Acquisition: Application Requirements

Regulatory Statement Number	CU-18-002
Legislation:	<i>Credit Union Incorporation Act</i>
Date:	April 1, 2018
Distribution:	All Authorized BC Credit Unions

PURPOSE

This Regulatory Statement (“Statement”) outlines the application process by which a credit union may obtain consent from the BC Financial Services Authority (“Authority”) to acquire another credit union and continue as a single credit union.

This Statement includes:

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

LEGISLATION

[Section 16](#) of the *Credit Union Incorporation Act* (“CUIA”) outlines the legislative requirements 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 Authority consents to the proposed Asset Transfer Agreement;
- the members and 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 Registry Services (“Registry”).

The Authority must consent to the Asset Transfer Agreement prior to the presentation of the proposed transaction to members.

BCFSA’s mandate includes protecting depositors and maintaining stability within the credit union sector of British Columbia. When assessing an application, BCFSA staff will consider the following:

- evidence that the Boards of both credit unions have considered other strategic options;
- whether the continuing credit union will function well and continue to meet supervisory expectations;
- the continuity and quality of services that will be provided to members during the integration and after the acquisition of the transferring credit union;
- the fulsomeness and transparency of the communications to members; and
- the potential impact of the transaction on the credit union system.

Classification: **Public**

600-750 West Pender Street
Vancouver, B.C. V6C 2T8

T 866 206 3030
F 866 660 3365

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BCFSA expects credit unions to meet with BCFSA staff prior to submitting an application for consent.

REQUIREMENTS

Step One: Application for Consent to Acquisition

Applications submitted to BCFSA should contain the following materials:

- non-refundable [application fee](#) of \$5,000 payable to BCFSA;
- 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);
 - member services and product offerings;
 - detailed analysis of key risks facing the new entity and fulsome mitigation plans;
 - key internal control and risk policies;
 - Capital Policy (including capital contingency plan), Liquidity Policy (including liquidity contingency plans), Investment & Lending Policy;
 - the implementation and integration plans outlining the banking system, audit, and accounting integration, and control of operational risk during transition;
 - financial model for a three-year forecast horizon including all key assumptions (supporting rationale and calculations where applicable), detailed breakdown of costs, demonstration of value of the asset acquisition (quantitative and qualitative measures), sensitivity analysis, and all working papers; and
 - pro forma financial statements including consolidated financial statements and capital and liquidity projections.
- independent due diligence conducted by each credit union:
 - rationale for pursuing an asset acquisition;
 - detailed analysis of strategic options and exploration of potential drawbacks that could result from the transaction;
 - full review of the partner credit union(s) including analysis of differences in risk appetite and tolerances, must be fulsome enough to identify all material risks;
 - supporting documentation such as reports written by third party experts; and
 - the Board of each credit union is accountable for ownership of the independent due diligence, even in the event that elements of the due diligence are outsourced.
- draft copies of the Notice to Members and Special Resolution(s);
- all other communications, including the member and employee engagement strategies for each participating credit union; and
- individual share valuations conducted on investment shares of the transferring credit union(s) including an opinion and supporting report from an individual or firm accredited in business valuation where applicable (not required if the par value of investment shares is provided for in the credit union's Rules).

While this Statement provides direction to credit unions on the base requirements of an application, additional information may be required as deemed necessary by BCFSA staff in order to appropriately assess the proposed asset transfer.

Step Two: Communications to Members

If the Authority consents, the transferring credit union must 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 shares, the proposed Asset Transfer Agreement must be submitted to holders of each class for approval by a separate Resolution(s).

The Authority expects a high level of transparency and engagement between the credit unions and their members and employees. BCFSa 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, only the transferring credit union must obtain the membership's approval of the transaction; however, the Authority 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 BCFSa 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 there is no contradiction to 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 unions.

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 Asset Transfer 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 potential severance costs;
- confirmation that all deposits will continue to be insured under the Credit Union Deposit Insurance Corporation("CUDIC");
- the governance structure of the new corporate entity;
- a copy of the Letter of Consent issued by the Authority;
- 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 acquisition separately in the Notice package; however, the Notice must be the most prominent communication.

Communications to stakeholders must not imply that the Authority has approved the merits of the acquisition or considers the transaction to be in the best interests of any credit union or its members.

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 their right of redemption, the shares must be redeemed at the fair market value deemed under the Asset Transfer Agreement.

Upon approval by the membership and equity shareholders 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 BCFSA. The Authority will certify the Resolution(s) and the Asset Transfer Agreement. Subsequently, the applicant may submit the certified documents to the Registry for filing.

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.

Application fees may be paid in IRIS by credit card (Visa or Mastercard). Payment by credit card through IRIS is an integrated part of a submission and will be remitted when the applicant submits the required application materials. Please contact statapprovals@bcfsa.ca for instructions on how to remit payment if you wish to pay an application fee by electronic fund transfer, wire, or cheque.

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.