

Federal Credit Unions

Considerations for a Credit Union Becoming a Federal Credit Union

Addendum #2 — January 2020

Prepared by McDougall Gauley LLP
with assistance from
Canadian Centre for the Study of Co-operatives
University of Saskatchewan

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Editing, design, and layout by Nora Russell

McDougall Gauley LLP
500 – 616 Main Street
Saskatoon, SK, S7H 0J6
Phone: 306.653.1212
Website: www.mcdougallgauley.com
Contact: Nancy E. Hopkins QC, (Hon) CPA, ICD.D

Canadian Centre for the Study of Co-operatives
Diefenbaker Building
University of Saskatchewan
Saskatoon, SK, S7N 5B8
Phone: 306.966.8509
Website: www.usaskstudies.coop
Contact: Marc-André Pigeon

J.J. (Joe) Dierker, QC, of McDougall Gauley LLP, wrote this addendum. Joe has been involved in credit union and financial institution legislation at the provincial, national, and international levels for some fifty years. In 2013 he was inducted into the national Credit Union Hall of Fame.

Marc-André Pigeon, director, Canadian Centre for the Study of Co-operatives, University of Saskatchewan, wrote the foreword. Marc-André is assistant professor in the Johnson Shoyama Graduate School of Public Policy. Prior to that he served in a public policy role with the Canadian Credit Union Association and as a special advisor to the federal Department of Finance.

The first two documents in this series — *Federal Credit Unions: Considerations for a Credit Union Becoming a Federal Credit Union* and *Federal Credit Unions: Considerations for a Credit Union Becoming a Federal Credit Union: Addendum #1* — can be found [here](#).

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Foreword

Marc-André Pigeon, Director
Canadian Centre for the Study of Co-operatives

IN THIS THIRD INSTALMENT of his treatise on federal credit unions, lawyer Joe Dierker explores in depth two little known but important features of the federal credit union framework.

The first concerns the ability of a provincial credit union, or several such entities, to set up a federal credit union (FCU) as the first step in becoming a federal credit union itself. A reader might reasonably ask why these organizations would consider this option in lieu of simply continuing to federal jurisdiction or, alternatively, setting up a bank subsidiary. Wouldn't that be simpler? And doesn't the federal framework require federal credit unions to have a majority of natural persons — i.e., real people — as members? And don't there have to be at least five members? How could a provincial credit union get around these constraints and, more importantly, why would it?

This discussion addresses these technical challenges by pointing out that the framework allows the federal Minister of Finance to exempt an applicant from all these and other requirements, at least temporarily. So yes, a provincially credit union can, on its own, set up a federal credit union and be the sole “member,” while retaining its provincial status. But that doesn't deal with the why. On careful examination, the benefits are obvious and notable:

- The federal credit union may immediately begin operating outside of its provincial boundaries and, in so doing, has clear access to the payments system and reduced concerns about out-of-province deposits or serving members who move to another part of the country. This should provide some comfort to the provincial regulator, particularly if the credit union has accumulated a large amount of out-of-province

brokered deposits. While a bank subsidiary would yield similar benefits, it would not be able to avail itself to the next three points.

- The federal credit union can call itself a co-operative bank or, alternatively, a federal credit union. As such, it can strengthen the value of the co-operative brand to the betterment of the system. This brand value is not an option with a bank subsidiary, nor does a bank subsidiary strengthen the co-operative / credit union brand.
- The provincial credit union can, at some later point, amalgamate itself with its federal subsidiary and make use of the provisions of the *Bank Act* discussed in Addendum #1. Again, this option is not directly available in the case of a provincial credit-union-owned bank subsidiary.
- The provincial credit union can “show” its members the benefits of having a federal credit union without immediately requiring a member vote. If properly executed, this “training wheels” federal credit union should smooth an eventual continuance vote by the membership, which will by then have come to recognize the advantage of banking with an entity that can easily serve their needs wherever they may be in Canada.

The second feature of the federal credit union framework explored here concerns the ability of a bank to mutualize, i.e., become a federal credit union. Again, the question arises: Why would a bank want to become a credit union? Well, the provision means that provincial credit unions with bank subsidiaries could mutualize their banks (i.e., turn them into a federal credit union) and then, subsequently, merge themselves into the newly formed federal credit union. Alternatively, a provincial credit union may want to set up a bank for some indefinite period of time, but retain the option of eventually using it as a vehicle to amalgamate itself into the federal domain (after first converting the bank to a federal credit union). And there is a third possibility: A bank not owned by a provincial credit union may find it advantageous to mutualize into a federal credit union. The drafters of the *Bank Act* were clearly contemplating these scenarios.

Introduction

THIS IS THE THIRD IN A SERIES OF DOCUMENTS that have been developed, with the support of the Canadian Centre for the Study of Co-operatives, to assist provincial credit unions wishing to become (or “continue as”) federal financial institutions — formally known as Federal Credit Unions.¹

The initial document focused primarily on general information for a single credit union considering a decision to continue as a federal credit union (FCU). Addendum #1, dated February 2019, considered the continuance of two or more credit unions coming together to become a single federal credit union. Addendum #2 is divided into two parts. Part 1 examines the use of one or more of the exemptions stated in section 47.19 of the *Bank Act* to assist a provincial credit union to establish an FCU. Part 2 looks at the use of the exemptions in section 47.19 and section 216.01 of the *Bank Act* to permit a common share bank to convert into an FCU.²

Section 47.19 of the *Bank Act* contains a number of exemptions that provide flexibility in the design, structuring, and incorporation of an FCU. These exemptions could permit a provincial credit union or several such entities to establish an FCU as a subsidiary or a closely

1. As with the original paper, this addendum is the work of J.J. (Joe) Dierker, QC, who has been involved in credit union and financial institution legislation at the provincial, national, and international levels for some fifty years. The comments here are intended to provide general information only. Those giving the matter serious consideration would also be wise to retain the services of other professionals with expertise in interpreting the *Bank Act*.
2. Unless otherwise specified, references herein to section and subsection numbers are from the *Bank Act*. Due to frequent updates to the *Bank Act*, there are no direct links to the individual sections referred to in this paper. Readers will find it easy to navigate to particular sections by making use of the *Act*'s “Table of Contents” [here](#).

held FCU.³ Section 216.01 permits a credit union that owns a common share bank to continue it as an FCU. The exemptions in section 47.19 are expected to be of assistance in establishing it.

As discussed more fully in the original document, the decision of credit union members to move to an FCU is significant, requiring extensive planning for the operation of an entirely new model for supplying financial services to its members and other customers. Most importantly, the members must approve a decision to adopt a legal structure that moves from the provincial domain to that of federal banking legislation. This will require the provincial credit union, its directors, and members to address governance and business relations in an entirely different manner. Members will examine these matters with the knowledge that their decision will significantly increase the capacity of their credit union. As an FCU, it will be able to provide expanded financial services beyond provincial boundaries, avail itself of the “co-operative bank” or “federal credit union” appellations (section 41 of the *Bank Act*), and have the added protection of the Canada Deposit Insurance Corporation.⁴

What does it mean for a provincial credit union to be regulated as a bank by a federal authority? This addendum will examine some of the fine points in the *Act* that allow for the establishment of an FCU, to gain experience before bringing the total of the credit union’s governance and business into the federal regime. It will also consider the circumstances in which several credit unions may wish to consolidate their activities within an FCU.

3. “Closely held” is a business term that means owned or controlled by a small number of individuals, or in this case, credit unions.

4. The Canada Deposit Insurance Corporation is a crown corporation created to provide deposit insurance to depositors in Canadian commercial banks and savings institutions. CDIC insures Canadians’ deposits held at Canadian banks up to C\$100,000 per eligible account in case of a bank failure.

Part 1: Section 47.19

PART 1 CONTEMPLATES A PROVINCIAL CREDIT UNION establishing an FCU through the use of some or all of the exemptions permitted by section 47.19 (and, as may be applicable, sections 39.01 and 39.02), with the credit union and the FCU amalgamating into one FCU after an agreed period of time. In this case, we will consider the FCU as a subsidiary controlled by a single provincial credit union, although the model will also permit more than one credit union to own the FCU and to amalgamate as above.

The rules in the *Bank Act* for the structuring and operation of an FCU protect the principle that credit unions are financial institutions that operate on a co-operative basis to provide financial services to their members.⁵

An FCU may be created by:

- incorporation pursuant to section 25 of the *Bank Act*
- continuance pursuant to section 33
- amalgamation of two FCUs pursuant to section 223

Each application for the establishment of an FCU will be examined to determine if the FCU will be “organized and carry on business on a cooperative basis in accordance with section 12.1.” Section 47.19 can assist in this determination.

Below are some pertinent details of Section 47:

- Section 47.11: Prohibition — An entity must not become a member of a federal credit union, if, as a result of becoming a member, the majority of the members of the federal credit union would not be natural persons.
- Section 47.12: Provision of services — A federal credit union must provide its services primarily to its members.
- Section 47.18: Obligation to have at least five members — A federal credit union must ensure that at all times it has at least five members.

5. See Appendix A for the definition of “co-operative basis.”

- Section 47.19: Exemptions — The Minister may, subject to any terms and conditions that the Minister considers appropriate, exempt any entity or federal credit union from the application of sections 47.11, 47.12, and 47.18.

Section 47.19 thus permits the Minister to allow an FCU to be incorporated:

- with the majority of the members not being required to be natural persons, e.g., to permit an FCU to be owned by a credit union
- with the FCU being permitted to provide financial services to any person, e.g., to the credit union and its nonmember customers
- with the FCU being owned and controlled by less than five members, e.g., by a single or several credit unions

These provisions offer a broad range of options to permit a credit union, by establishing an FCU, to meet both its short- and long-term governance and operational needs. The FCU may be established, owned, and controlled by a single provincial credit union; sections 39.01 and 39.02 are available to support the design of a suitable governance and business structure for the FCU for up to three years following its incorporation. The combination of sections 47.19, 39.01, and 39.02 provides great flexibility in the start-up design of an FCU.

Available Exemptions

The availability of any of the exemptions pursuant to section 47.19 is always subject to the Minister's approval and conditions. In addition, subsection 27(i) requires the Minister to take into account whether the establishment of the FCU would be in the best interests of the co-operative financial system in Canada. Would a credit union's incorporation of a subsidiary or closely held FCU be reasonably likely to negatively impact the financial structures of the existing credit union system? In fact, the use of section 47.19 to establish a federal credit union, as discussed herein, is expected to assist the system. It expands the ability of a provincial credit union to provide financial services on an extra-provincial basis in a manner that provides greater legal certainty to the system as a whole.

While 47.19 does not specifically state that an exemption provided under that section must be offered on a term basis only, it is expected that an FCU established as a subsidiary of a credit union (or as a closely held FCU by several credit unions) will be granted any such exemption for a specific term. This would assure both the Minister and the provincial regulator that the credit union and the FCU would be brought together, through an amalgamation, within a reasonable time. This addendum assumes this general principle with respect to section 47.19 exemptions.

As well, section 973.01 requires the Minister, in providing approval under the *Act*, to consider whether the approval would affect an FCU's ability to carry on business on a co-operative basis. One would expect that an FCU that is closely held and controlled by a credit union would be meeting this condition, as the members of the credit union are ultimately responsible for the FCU's governance.

The Minister and the Office of the Superintendent of Financial Institutions (OSFI)⁶ will carefully review the proposed business plan for an FCU incorporated with the assistance of one or more of the exemptions contemplated by section 47.19. Any exemption may be subject to one or all of:

- the terms or conditions for incorporation (section 28(3))
- the provisions in any Order to Commence Business (section 48)
- the transitional rules for the FCU (section 39)
- undertakings relating to any of the above

Section 48 provides that no FCU may commence or carry on any business without the approval of the OSFI, and section 53 notes that the Order to Commence Business may be subject to the conditions or limitations that “the Superintendent deems expedient and necessary.” The Minister may establish any requirement for a section 47.19 exemption and any term or condition for the incorporation of the FCU (subsection 28(1)). Some or all of these requirements may be set out in the Order to Commence Business, which may address:

- an end date (possibly subject to extension on conditions) by which the credit union that controls or has a substantial interest in the FCU must amalgamate (section 33) with the FCU or the FCU must to be wound up
- a statement on the classes of business in which the FCU may engage, or conditions related thereto, including with a controlling credit union, without further approval by the Superintendent
- special rules on related-party activities, including those that may apply on the transfer of assets between the credit union and the FCU (subsection 494(3)) and the rules for the application of section 482
- prudential rules that address the FCU's provision of financial services
- other prudential or governance matters

6. The Office of the Superintendent of Financial Institutions is an independent federal government agency. It is the sole regulator of banks, and the primary regulator of insurance companies, trust companies, loan companies, and pension plans in Canada.

The Minister may set out the terms and conditions for the incorporation of the FCU to be contained in its Letters Patent (subsection 28(3)). The OSFI may also require an undertaking agreement, similar to that referred to in section 470, for a credit union's control of the FCU. In addition, the OSFI may require the FCU (and the credit union) to enter into a prudential agreement pursuant to section 959 "for the purposes of implementing any measure designed to protect the interests of depositors, policyholders and creditors of any federal financial institution affiliated with it."

The business plan for the incorporation of an FCU that is controlled by a credit union should specify that the credit union must amalgamate with the FCU within a reasonable time, or if not, the FCU may be required to be wound up under the *Winding Up and Restructuring Act* or converted to a common share bank under section 216.08.

Control Considerations

Control of a federal financial institution is prohibited, unless approved by the Minister, so it is an extremely important matter to be considered. As section 3(1)(a.1) defines it, a provincial credit union would control an FCU if it has "the right to exercise more than 50 percent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the federal credit union." This would be the case if the credit union was the only shareholder of the FCU, and may be the case if more than one credit union is participating in its ownership. The FCU's bylaw will be important in determining the question of control. Section 9.1(1) states that if members of an FCU agree to act jointly in exercising their votes at a meeting of members, they are seen to be acting in concert and may be effecting control in that manner.

It should be noted that control may be in the form of *legal* control (section 3(1)(a.1)) or *de facto* control (section 3(1)(d)), as described in the guidelines for an FCU (Statutory Orders and Regulations 2012-278). *De facto* control as stated in section 3(1)(d) means that "a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity."

An FCU that is established as a subsidiary must be controlled by its "parent" provincial credit union, which is responsible for ensuring that the FCU is operated in accordance with the business plan approved by the OSFI for its incorporation. Compare this to an FCU that is owned by many members (widely held), where no individual member is in control, as out-

lined by the definition of co-operative basis in section 12.1(1). In that case, the OSFI will require the FCU to meet all required prudential standards by itself, as opposed to the first example here, where the controlling “parent” credit union is obliged to provide financial, management, and operational support.

We should also look at section 377.2, which provides that no person, without the approval of the Minister, may directly or indirectly control an FCU. The Minister may grant this approval only if an FCU is being incorporated or continued; in addition, the control must be terminated within the date specified by the Minister. The concepts in section 377.2 are consistent with those in section 47.19, which permit a credit union to establish an FCU as a subsidiary, pending amalgamation with the credit union. While subsection 973.04(4) permits the Minister to amend the undertaking, it should not be expected that he or she would do so to permit a credit union to control an FCU for an indefinite period of time.

This concept of control also requires the FCU to obtain the OSFI’s consent if it proposes to give up either legal or *de facto* control (sections 3(1)(a.1) and 3(1)(d)) and have another person acquire or share control of the FCU. This would be important if more than one credit union participated in the FCU and control within the group could change.

If more than one credit union owns an FCU, control may change as part of an amalgamation. For example, if two credit unions own an FCU, and they amalgamate, control will be had by the resulting entity.

As noted above, a credit union that has applied to the OSFI for control of an FCU is required to provide it with financial, managerial, and operational support (the Support Principle). The business plan for the FCU must anticipate any obligations that may arise from the Support Principle, such as the provision of capital, liquidity, risk management, internal control systems, training, and other needs, including the possibility of increased requirements during the control period. Essentially, the Support Principle expects the credit union to provide the FCU with all the resources it will need to meet the prudential practices as outlined in the *Bank Act*. The provincial credit union must also take into account the fact that the Support Principle may result in a reduction of its own regulatory capital or liquidity. Further, the OSFI may require the credit union to enter into a formal undertaking to meet the obligations of this principle.⁷

7. Subsection 2.1(f) of the OSFI Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies.

A business plan that contemplates a credit union controlling an FCU is expected to anticipate the amalgamation of the credit union and the FCU by a date specified in the plan. The date will be established in discussions with the OSFI for the requested exemptions in section 47.19. The business plan should also consider the effect of the amalgamation on the control and business of the FCU. The OSFI must be notified of any major changes to the business plan.

The *Bank Act* imposes constraints on control and ownership of the shares of federal financial entities. According to section 373, no person may acquire a significant interest in an FCU without the approval of the Minister. A significant interest is defined as the ownership, directly or indirectly, of the number of shares that would give the credit union 10 percent of all membership shares. A person would also have a significant interest if they owned more than 10 percent of a particular class of other shares. This concept is important if the plan for the FCU includes capital funding by third parties.

The ability of a credit union to hold an investment in an FCU also requires approval from the applicable regulator as per the provincial *Credit Union Act*.

As noted, a credit union that proposes to establish an FCU requires OSFI consent for both significant interest in it and control of it. If a group of credit unions were to establish an FCU with a board structure that did not provide for control by one credit union, all participating bodies would require OSFI's approval for joint control. This could be part of the original design or a subsequent adjustment, if additional credit unions become involved or the existing owners alter their control relationship.

After the amalgamation of a credit union and an FCU, all persons who held membership in the amalgamating entities will be a member of the new FCU (section 38(2)) and will be responsible for creating a bylaw for the FCU that provides for its governance according to the *Bank Act*. During the interim period (prior to the amalgamation) — to ensure a smooth retention of members — it may be preferable to retain the membership in the provincial credit union, members being defined as persons who receive financial services from either the credit union or the FCU. This would ensure that users of services from either the credit union or the FCU would be members of the FCU on the amalgamation. The business plan may also include the concept of users of the FCU's financial services eventually becoming members of the credit union, after the amalgamation. The FCU's governance structure must ensure that the amalgamation of the FCU and the credit union occurs within the timeframe contemplated in the business plan.

Purchasing and Acquiring Assets — Provincial Credit Unions and Federal Credit Unions

Prior to the amalgamation, when both the credit union and the FCU are providing financial services to members and others, each may acquire some of the business assets of the other; upon amalgamation, the totality of the business will be consolidated in the FCU. The *Bank Act* provides careful rules to govern the transfer of these assets and liabilities. They are outlined briefly below.

Subsection 494(1): The FCU may purchase or otherwise acquire assets from the provincial credit union that are:

- securities of or guaranteed by the Government of Canada or a province
- assets secured by securities mentioned above
- goods for use in the ordinary course of business

Subsection 494(2): The FCU may sell its assets to the provincial credit union if:

- the purchase price is paid in cash
- there is an active market for these assets and the purchase price reflects that value

Subsection 494(3): The FCU and the provincial credit union may acquire and dispose of assets to each other (apart from real property) pursuant to an arrangement approved by OSFI.

Section 482: Except for specified assets (primarily those guaranteed by a government or a third-party financial institution), the FCU may not acquire from or sell to the provincial credit union assets that exceed, *in any year*, 10 percent of the value of its own assets.

In its application for the incorporation of the FCU, the credit union is expected to establish appropriate related-party transaction rules for both sides, which would be set out in an undertaking to the OSFI. The conduct review committee for the FCU must review these procedures to ensure that they comply with the related-party rules, including any undertaking pertaining to the acquisition and disposal of assets between the credit union and the FCU (section 195(3)). These comments discuss only the transactions between an FCU and a credit union. The related-party rules also limit transactions between an FCU, its officers and directors, and any other related party, which is defined in section 468.

If the credit union should wish not to proceed with an amalgamation of the FCU, the

FCU cannot sell any of its assets to the credit union for the purpose of winding up, which must be done through the *Winding Up and Restructuring Act*.

Rationale

A credit union will incur cost in developing a business plan for an FCU that it intends to use as a vehicle for itself becoming an FCU. This addendum addresses the use of a section 47.19 exemption approach to establishing an interim FCU. This approach must be supported by the members of the credit union and with a business plan that demonstrates the following:

- the FCU will be financially successful
- creation of the FCU will enhance the ability to provide financial services to the members of the credit union, including expanded markets and extra-provincial membership for the combined business activities of the credit union and the FCU
- the FCU will operate in a manner that will permit the credit union to comply with its provincial laws, including its obligation to support the capital, liquidity, and operations of the FCU
- the establishment of the FCU will be in the best interests of the co-operative financial system in Canada (subsection 27(i))
- the credit union will amalgamate with the FCU by a defined date or a defined event

Establishing an interim FCU creates flexibility for the credit union in the accomplishment of its goal of achieving federal credit union status and, in the interim, having the benefit of the FCU operations to provide the financial services required by its members. Establishing an FCU will allow the credit union to enter the federal financial institution world of business and rules, which may be of particular importance in matters such as participation in a clearing and settlement system and extra-provincial business relations.

Part 3 of the original document — *Federal Credit Unions: Considerations for a Credit Union Becoming a Federal Credit Union* — provides an overview of the matters a credit union should contemplate if it wishes to become an FCU. An important consideration is its ability to take deposits and make loans outside the province of its incorporation. A credit union is authorized to carry on its business beyond its designated region, but only “to the extent that the laws of the second jurisdiction permit,” which limits its ability to engage in business in specific areas.⁸ A credit union that acquires money outside its usual boundaries must comply with the laws of that jurisdiction. These are critical issues for the credit union and its directors.

With appropriate planning, an FCU has the capacity to engage in business throughout Canada. Thus, establishing an FCU will assist a credit union in providing the financial services required by its members.

Part 2: Continuation of a Bank under Section 216.01

TAKE AS AN EXAMPLE a credit union (an Owner Credit Union) that owns and controls a common share bank (an Owned Bank). The business plan for the credit union has determined that supplying financial services is best accomplished through the support of a federal financial institution.

Each Owner Credit Union must comply with provincial rules for providing financial services and the rules of the *Bank Act* for the operation of the Owned Bank. Section 216.01 provides an option that will assist the Owner Credit Union and the Owned Bank in planning consolidated financial services: “The Minister may, by letters patent, amend the bank’s incorporating instrument to convert the bank into a federal credit union.”

Section 216.01, combined with section 47.19 and sections 39.01 and 39.02, discussed above, gives the Owner Credit Union substantial flexibility in planning the governance and business practices of the FCU they intend to create.

The Owned Bank could become an interim FCU in the manner discussed above, and it would be expected that it would amalgamate with the Owner Credit Union within a defined period. A common share bank may not amalgamate with an FCU directly nor with an Owner Credit Union (section 223). Once it is converted into an FCU, however, amalgamation can occur.

The requirements of section 216.05 permitting the Owned Bank to become an FCU are similar to those in section 27 for the incorporation of an FCU and subsection 224(2) for the

8. Typically, the legislation refers to the ability to carry on an extra-provincial “deposit business.” The definition of “deposit business,” in Canadian and foreign jurisdictions, is often very broad. As an example, section 81(1)(b) of the *British Columbia Financial Institutions Act* states as follows: “A person must not carry on deposit business in British Columbia unless the person is a credit union or extra-provincial credit union that has a business authorization to carry on deposit business.” The expression “deposit business” is defined as follows: “Deposit business means the business of receiving on deposit or soliciting for deposit money that is repayable ...”

amalgamation of the Owner Credit Union with the FCU. Compliance with the section 216.05 concepts would satisfy these rules for the continuation of the bank and its subsequent amalgamation, as an FCU, with the Owner Credit Union.

An Owner Credit Union should carefully review the provisions of subsection 38(2), which defines the rules for the conversion of the Owned Bank's common shares to membership shares in a new FCU. Common shares in the bank held by persons other than the Owner Credit Union as well as those held by the credit union, become membership shares in the FCU, and the owners of those shares become members of the FCU. If the credit union is the only owner of common shares, there is no effect to the members, as the members of the credit union become the members of the FCU upon that amalgamation. If persons apart from the credit union own common shares in the bank, there may be a matter of financial value that requires consideration at the time of the amalgamation.

It is important to note that section 232 will *not* permit the bank to sell its business to the Owner Credit Union, which is not a federal financial institution.

The concepts in section 216.01 provide a planning model for any credit union that has a business plan for becoming an FCU but owns a bank and/or requires additional time for its business adjustment, possibly with other credit unions, or to address governance and member relations matters.

The continuation of an Owned Bank would be of particular interest to a credit union (or a group of credit unions) that wishes to expand the interprovincial supply of financial services.

Additional Comments

Any credit union employing section 216.01 to convert an Owner Bank into an interim FCU as a step in achieving formal FCU status should carefully examine all the ownership concepts discussed in Part 1 of this addendum. This would include the structural rules and conditions that may comprise part of the FCU's Order to Commence Business. If the FCU is owned by more than one credit union, the associate ownership rules of section 371 may also apply. Credit unions may be associates of each other in the circumstances where more than one credit union becomes the owner of an FCU.

An FCU, but not a bank, may deduct the amounts mentioned in section 137(6) of the *Income Tax Act*: allocations in proportion to borrowing and bonus interest payments.

Restricted Information

THIS ADDENDUM IS NOT INTENDED to provide a complete review of the concepts of continuance and should be read as part of the original paper — *Federal Credit Unions: Considerations for a Credit Union Becoming a Federal Credit Union* — and Addendum #1. Readers who are considering moving a credit union or an Owned Bank to formal FCU status should carefully review the comments and recommendations provided in the original paper, Addendum #1, and Addendum #2.

In addition, the comments herein are intended to provide general information. Those giving these matters serious consideration would also be wise to retain the services of other professionals with expertise in interpreting the *Bank Act*.

Appendix A

Cooperative Basis

Section 12.1(1) For the purposes of this *Act*, a federal credit union is organized and carries on business on a cooperative basis if

- (a) a majority of its members are natural persons;
- (b) it provides financial services primarily to its members;
- (c) membership in the federal credit union is wholly or primarily open, in a non-discriminatory manner, to persons who can use the services of the federal credit union and who are willing and able to accept the responsibilities of membership;
- (d) each member has only one vote;
- (e) a delegate has only one vote even though the delegate is a member or represents more than one member;
- (f) dividends on any membership share are limited to the maximum percentage fixed in the federal credit union's letters patent or by-laws; and
- (g) surplus funds arising from the federal credit union's operations are used
 - (i) to provide for the financial stability of the federal credit union,
 - (ii) to develop its business,
 - (iii) to provide or improve common services to members,
 - (iv) to provide for reserves or dividends on membership shares and shares,
 - (v) for community welfare or the propagation of cooperative enterprises, or
 - (vi) as a distribution to its members as a patronage allocation.

Restrictions

(2) Paragraph (1)(c) is subject to any restrictions in the by-laws of the federal credit union on the classes of persons to which membership may be available, as long as the restrictions are consistent with applicable laws with respect to human rights.