

August 15, 2016
File No.: 71000-01
Ref. No.: 1819

To: CEOs/General Managers, British Columbia Credit Unions

Re: Use of Deposit Agents – CU-2016-01

Thank you for providing information on your credit union's use of deposit agents. The purpose of this letter is to provide additional information to credit unions and to clarify several points related to deposit agents.

Nominee accounts/form

The term 'nominee', while used in securities regulation, has no formal meaning within the *Financial Institutions Act* (FIA). FICOM's intent in stating that "deposit agents cannot act as nominee" in Information Bulletin CU-2014-02 *Use of Deposit Agents* was to clarify that deposits cannot be held for another party in a beneficial arrangement that does not amount to a relationship of trust under business and trust law. In short, regardless of the label or name used (e.g. nominee) the accounts used to deposit funds for the beneficial ownership of non-members must be trust accounts (pooled or individual) for a credit union to be able to accept these deposits under section 82 of the FIA. FICOM has updated the Information Bulletin to clarify this point.

Trust business and authorization

Potential concerns with non-authorized parties acting as trustees in brokered-deposit arrangements are not specific to the credit union sector. FICOM is currently working with other staff within the Ministry of Finance to clarify the application of the FIA to deposit agents to provide additional clarity on what parties may act as trustees in British Columbia. Where the deposit agent or broker acts as a trustee and is not an authorized trust company, inquiries should be made as to its authority to hold assets in trust and whether or not a trust business authorization is required.

Out of province business

When using deposit brokers, credit unions may be soliciting business outside of British Columbia depending on the specifics of the arrangements made between a credit union and deposit brokers. FICOM recommends each credit union receiving monies on deposit from beneficial owners outside of British Columbia seek a legal opinion from their legal counsel to ensure they are not in breach of section 81 of the *Credit Union Incorporation Act*. Please note a

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- Superintendent of Financial Institutions
 - Superintendent of Pensions
 - Superintendent of Real Estate
 - Registrar of Mortgage Brokers

2800-555 West Hastings
Vancouver, BC V6B 4N6
Telephone: 604 660-3555
Facsimile: 604 660-3365
www.fic.gov.bc.ca

credit union can apply to the Commission and the Credit Union Deposit Insurance Corporation (CUDIC) to conduct business outside of British Columbia.

Finally, FICOM reminds all credit unions that the use of deposit agents can introduce additional legal and operational challenges that deserve consideration when deciding on if and how deposit agents are to be used by a credit union in executing its business strategy.

If you have any questions regarding the use of deposit agents, please contact Melanie Achtemichuk, Executive Director, Policy & Approvals, at Melanie.Achtemichuk@ficombc.ca.

Sincerely,

A handwritten signature in black ink that reads "Frank Chong". The signature is fluid and cursive, with a large loop at the end of the last name.

Frank Chong
Deputy Superintendent, Regulation
Financial Institutions Commission