

<b>BULLETIN NUMBER:</b>	<b>CU-2014-02</b>
<b>TITLE:</b>	<b>USE OF DEPOSIT AGENTS</b>
<b>LEGISLATION:</b>	<b><i>FINANCIAL INSTITUTIONS ACT (FIA)</i></b> <b><i>CREDIT UNION INCORPORATION ACT (CUIA)</i></b>
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<b>DISTRIBUTION:</b>	<b>BC CREDIT UNIONS</b>

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## **PURPOSE**

The purpose of this bulletin is to inform all credit unions about the regulatory requirements related to the use of deposit agents.

## **BACKGROUND INFORMATION**

Credit unions are not prohibited under legislation from using deposit agents. However, credit unions must adhere to the provisions of the *Financial Institutions Act (FIA)*, the *Credit Union Incorporation Act (CUIA)*, and related regulations that pertain to the use of deposit agents. In addition, privacy legislation and anti-money laundering and anti-terrorism financing (AML/ATF) legislation is equally applicable.

## **FICOM EXPECTATIONS**

Deposit agents act on behalf of the credit union. It is therefore the credit union's responsibility to ensure the activities of its deposit agents are in compliance with applicable rules and regulations. Credit unions should have appropriate controls in place to ensure that its use of deposit agents is in compliance with the credit union's rules, applicable privacy and AML/ATF legislation, and the FIA and CUIA, including the following regulatory provisions:

### Area of operation

Credit unions must not use deposit agents in areas where they are not authorized to conduct deposit business.

### Credit union membership

Subject to a limited number of exceptions, as set out in the FIA, section 82, and the *Credit Union Deposit Acceptance Regulation*, a credit union can only accept deposits from members. The credit union's rules set out restrictions on membership.

The credit union must ensure that its deposit agents adhere to the credit union's rules, and the same FIA, CUIA, privacy and AML/ATF legislation, security measures, and operational practices applicable to the credit union, to the extent the deposit agent accepts and handles deposits and processes applications.

### Proper setting up of accounts: Deposit agents cannot act as nominee, and when acting as trustee must be authorized

Section 82 of the FIA, and the *Credit Union Deposit Acceptance Regulation*, restrict who may have deposit accounts and how the account may be held. A deposit agent may not hold deposit accounts for the benefit of another person, other than as a trustee authorized to do trust business.

The credit union's AML/ATF and member due diligence practices would apply to accounts held by deposit agents as trustee.

### Financial assistance for equity shares

Neither a credit union nor its deposit agents can provide financial assistance directly or indirectly for the purchase of its equity shares, including membership shares, to enable the depositor to become a member. Provision of any form of financial assistance for equity shares is contrary to section 68 of the CUIA.

The following arrangements are examples of prohibited financial assistance:

- The prospective member initially pays for the membership share requirement from his or her own deposit funds and subsequently is reimbursed by the deposit agent or the credit union for the membership share requirement.
- The deposit agent provides the funds for membership shares to the prospective member and is subsequently compensated by the credit union in the form of an increase in commission equal to the amount of the membership share subscription.
- The membership shares are issued and an account receivable is established for the purchase amount by either the credit union or deposit agent.

### Proper disclosure

Credit unions must ensure that deposit agents provide proper written disclosure to prospective members at the time of providing a product or service as required by section 91 of the FIA, section 14.2 of the CUIA, and the *Marketing of Financial Products Regulation*.

Credit unions must also ensure that its deposit agents use a proper disclosure statement which complies with the disclosure required pursuant to the *Marketing of Financial Products Regulation*, and that the forms and contracts they use comply with sections 91 and 93 of the FIA, and section 14.2 of the CUIA.

Avoiding misleading or deceptive advertising: use of term “government” is misleading or deceptive

Like credit unions, deposit agents must avoid incorporating misleading advertising of credit union products. This includes complying with the marketing restrictions applicable to products insured by the Credit Union Deposit Insurance Corporation (CUDIC).

For example, marketing of insured products should not claim that the products are insured or backed “by government”. CUDIC provides the deposit guarantee under the FIA, not government. While CUDIC may technically be a government corporation, by linking that with marketing of the guarantee provided by CUDIC, it is FICOM’s opinion that the public would be misled or even deceived into thinking that the guarantee is ultimately backstopped by government. The FIA does not require government to backstop CUDIC. Such representations would likely attract regulatory action under section 93 of the FIA.

Coercive tied selling prohibited

Credit unions must ensure that their deposit agents comply with the prohibition against coercive tied selling in section 94 of the FIA. A deposit agent may not place undue pressure on, or coerce, a person to obtain a product or service from another person (which is not limited to the credit union) as a condition of obtaining a product or service from the credit union.

Confidentiality of information and protection of privacy

A credit union must ensure that its deposit agents fully understand that legislation protecting commercial confidentiality and personal privacy applies to the information and records obtained and created in their role as deposit agent.

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 Insurance 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.