

March 30, 2017

BY E-MAIL (commission.consultation@ficombc.ca)
and BY HAND

Commission Consultation
Financial Institutions Commission
2800 – 555 West Hastings Street
Vancouver, BC
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Re: Public Comment on Coast Capital Savings

Please accept this letter as my response to your March 1, 2017 request for public comment regarding the application by Coast Capital Savings Credit Union to continue as a federal credit union. Attached to this letter is the document *A Case against Coast Capital Savings Becoming a Federal Credit Union*, dated March 8, 2017, which contains supporting argument and evidence.

Section 15.2(1)(b) of the *Credit Union Incorporation Act* (CUIA) imposes a requirement that a credit union obtain the consent of the Commission (and the credit union deposit insurance corporation) to transfer incorporation of a credit union. As recognized by Information Bulletin CU-17-001, this power of the Commission, the giving of consent for continuance, must be exercised in accordance with the Commission's mandate "to protect depositors from undue loss and unfair market conduct and to maintain stability within the BC credit union sector."¹

My comments herein focus on the validity of the process by which the member-owners of Coast Capital Savings expressed their desire to continue as a federal credit union. More specifically, I will be drawing upon FICOM's stated intention to ensure that "the continuation of the credit union to the federal regime is not contrary to the credit union members' interests,"² and that "the credit union's members are provided full and fair disclosure of information upon which to make their decision."³

In my submission, the Board of Directors has, over the past 14 years or more, engineered a process of converting the credit union into a federal institution that was *not* motivated primarily by the interests of the member-owners. Significantly, the 2016 vote for federal expansion was not a good-faith vote; it was engineered by management and the Board to obtain the result that they had been working towards for many years.

¹ FICOM, "Application for Consent to Continue a Credit Union to the Federal Credit Union Regime." CU-17-001, January 2017, page 1.

² *Ibid*, page 2.

³ *Ibid*, page 2.

Events of the past 14 years can be summarized as follows:⁴

- a. In 2003, management (presumably with the blessing of the Board) expressed its commitment to national expansion, and crafted a new “vision” statement—“Yes, from Coast to Coast.”
- b. Director remuneration based on national scope in 2007.
- c. Adopted a new “purpose” statement in 2009—“To change the way Canadians feel about banking, forever.”
- d. Executive compensation based on national scope in 2011.
- e. Years of lobbying government, leading to new federal legislation in 2012.
- f. Created a team of employees dedicated to the task of corporate expansion in 2013.
- g. Selling the idea to employees in 2015.
- h. A vote to obtain member consent, executed by management and other employees in 2016.

The evolution of Coast Capital Savings has been engineered by a community of self-interested management professionals—people who are naturally disposed to thinking about corporate growth as the dominant metric of business success, and who are also self-interested in terms of their career advancement and compensation. In limited amounts, there’s nothing wrong with any of these motivations. However, the evidence shows that this community of self-interested management professionals has deviated from the style of conduct that is appropriate for a co-operative, to the point that member-owner involvement in the institution is difficult and repressed, and the essence of democracy has been lost.

The net result is that the 2016 vote for national expansion, while apparently “won” in favor of national expansion, was not a valid expression of the interests of member-owners, because they were not fully informed and engaged in the process. The vote was not conducted in good faith because the Board was already heavily committed to national expansion.

My arguments are in five points (A through E, below), each having sub-points. Further explanations and evidence are presented in the accompanying document, as indicated by footnotes (the footnotes refer to section headings).

- A. It cannot be presumed that directors are representative of member-owners, and it cannot be presumed that directors and senior management are acting in the interests of member-owners.
 - a. Directors are not elected on the basis that they represent the opinions or values of the membership.
 - A candidate’s statement is limited to 100 words, which the Board must approve and can edit themselves.⁵
 - Campaigning/free speech is not permitted during election campaigns. Meetings of three or more people are not permitted.⁶

⁴ See *Not a Good-Faith Vote*

⁵ See *The Board has Muzzled Free Expression*

⁶ See *The Board has Muzzled Free Expression*

- Voting recommendations of the Nominations Committee are determinative, and therefore the election process itself is not a contributing factor to the makeup of the Board.⁷
 - Candidates systematically withdraw from director elections when they fail to receive a recommendation from the Nominations Committee.⁸
 - As they serve their terms, no statements are made openly by individual directors that could be used as a basis, during subsequent elections, for members to decide whether the director is properly representing their interests.⁹
- b. The Board has worked to stifle democratic processes
- The Board has enacted rules to give themselves great power over resolutions put forward by members.¹⁰
 - The Board is lobbying FICOM to make it harder for members to put forward resolutions.¹¹
 - The Board has said that special resolutions are expensive and shouldn't happen.¹²
- c. The Board has actively thwarted active members
- The Board sidestepped the 2013 Special Resolution in which members responded to the large increases in director compensation.¹³
 - The Board was hostile to member-introduced special resolutions in 2014 in the sense that they crafted their own set of obfuscating resolutions in response.¹⁴
- d. The Board has enacted mechanisms to maintain power within a community of selected people.
- Regarding the election of directors, history has shown that the voting recommendations of the Nominations Committee are determinative, and therefore the election process itself is not a contributing factor to the makeup of the Board. Furthermore, candidates systematically withdraw when they do not receive a recommendation from the Nominations Committee.¹⁵
 - The Nominations Committee is composed of members of the Board, as opposed to an independent group of credit union members.
 - The Nominations Committee employs a so-called "independent" consultant, but this consultant is selected and paid by the Board.¹⁶
 - The criteria of the Nominations Committee do not mention community values. Rather, the focus is on particular skillsets and experience that correlate with management professionals.¹⁷

⁷ See *Election Recommendations are Definitive and Undemocratic*

⁸ See *Election Recommendations are Definitive and Undemocratic*

⁹ See *No Personal Accountability of Directors*

¹⁰ See *The Board Thwarts Democracy*

¹¹ See *The Board Thwarts Democracy*

¹² See *The Board was Hostile towards Active Members in 2014*

¹³ See *The Board Sidestepped the 2013 Member Resolution*

¹⁴ See *The Board was Hostile towards Active Members in 2014*

¹⁵ See *Election Recommendations are Definitive and Undemocratic*

¹⁶ See *Election Process has been Crafted to Favour the Board*

¹⁷ See *The Board is Filled with Management Professionals*

- There are currently no term limits, and the Board has been duplicitous on the matter of enacting term limits.^{18 19}
- B. Members were not provided full and fair disclosure prior to the vote for the 2016 Special Resolution for national expansion.
- a. Conflicts of interest of the senior managers and directors were not disclosed or discussed.
 - The compensation of management and the directors has already been markedly increased with the presumption that Coast Capital Savings is a national institution.^{20 21}
 - As Coast Capital Savings grows as a national institution, the compensation of management and directors will increase since Coast Capital’s established compensation philosophy bases their compensation on their “peer group.”^{22 23}
 - Being regulated under the *Bank Act* offers a new career path for management professionals in that being elected to the Board makes one a candidate for the position of CEO.
 - b. Proposed bylaws by which Coast Capital Savings would operate as a federal credit union were not disclosed prior to the vote. Coast Capital Savings did not make the proposed bylaws available to its members until March 15, 2017. The new bylaws include reductions in members’ rights.
 - c. The Board did not disclose the ways in which the *Bank Act* reduces member rights. One example concerns rights upon expulsion. Whereas the *Credit Union Incorporation Act* prescribes that a member remains a member until they have exhausted their appeals of the expulsion,²⁴ the *Bank Act* prescribes that a member can be expelled forthwith by the Board, and reinstatement can come later if an appeal is successful.²⁵
 - d. Changes to the credit union rules on expulsion were not disclosed. Under the proposed new rules (bylaws), a member being expelled can make an appeal, but doesn’t actually have the right to say anything to the membership to make their case. Only the Board gets to say anything.

The new rule states:

If such notice of appeal is filed, the Board of Directors shall submit an ordinary resolution to members for consideration at the Annual General Meeting on whether to reinstate the expelled person’s membership in the Credit Union.²⁶ [Underline added]

- e. The Board’s arguments in favour of national expansion were oriented towards members as customers, not owners.^{27 28 29 30}

¹⁸ See *The Board was Hostile towards Active Members in 2014*

¹⁹ See *The Board has Demonstrated Self-Interest*

²⁰ See *Board and Management Already Paying Themselves to Think Nationally*

²¹ See *The Board has Demonstrated Self-Interest*

²² See *Board and Management Already Paying Themselves to Think Nationally*

²³ See *The Board has Demonstrated Self-Interest*

²⁴ *Credit Union Incorporation Act* section 48(7)

²⁵ *Bank Act* section 47.06

²⁶ Proposed Rules of Coast Capital Savings, section 2.4

²⁷ See *Shallow Arguments*

- f. The Board did not discuss the manner in which Coast Capital Savings will compete with other credit unions, which is contrary to credit union philosophy.^{31 32}
 - g. The Board did not disclose the information that FICOM has deems to be relevant—including business plans; contingency plans; discussion of likelihood of success³³—with any significant degree of sophistication.
- C. The Board did not put forward the 2016 Special Resolution in good faith.
- a. Management and the Board were already committed.
 - Management and the Board had a long history of activity with regard to national expansion, which they misrepresented.^{34 35}
 - b. Management and the Board had taken steps that would need to be reversed if the vote for national expansion had failed—steps that shouldn’t have been taken without consent from the membership.
 - New vision and purpose statements had been adopted for the institution.³⁶
 - Management and the Board were already being compensated, in part, to reflect Coast Capital Savings as a national organization.³⁷
 - Management had adopted an organizational structure that included people dedicated to the task of national expansion.³⁸
- D. The vote on the 2016 Special Resolution for national expansion was conducted improperly.
- The Board promoted the vote by offering a pair of \$5000 cash prizes. Along with their promise that “voting is easy and takes less than a minute,” they encouraged low-information voters to follow the Board’s voting recommendation.³⁹
 - There was improper management involvement.⁴⁰
 - There was improper employee involvement.⁴¹
 - The Board created no opportunities for discussion among members, and no opportunities for dissenting voices to be heard by the entire membership.⁴²
 - The time allotted for consideration and debate of the provided information was inadequate for such a major decision.⁴³

²⁸ See *The Board Treats Members as Customers, not Owners*

²⁹ See *Coast Capital Members will become Co-Equals among National Members*

³⁰ See *Improper Employee Involvement in Vote*

³¹ See *Coast Capital Members will become Co-Equals among National Members*

³² See *Coast Capital Committed to Competition among Co-ops*

³³ FICOM, “Application for Consent to Continue a Credit Union to the Federal Credit Union Regime.” CU-17-001, January 2017, page 5.

³⁴ See *Board and Management were Already Committed*

³⁵ See *Not a Good-Faith Vote*

³⁶ See *Board and Management were Already Committed*

³⁷ See *Board and Management Already Paying Themselves to Think Nationally*

³⁸ See *Board and Management were Already Committed*

³⁹ See *Vote? Or Prize Draw?*

⁴⁰ See *Improper Management Involvement in the Vote*

⁴¹ See *Improper Employee Involvement in Vote*

⁴² See *No Meaningful Discussion/Debate among Members is Possible*

- The CEO campaigned during the voting period inside polling stations (branches), giving gifts to potential voters.⁴⁴
 - The Board used the online ballot itself to make a final pitch for their desired outcome.⁴⁵
 - Different information was provided online versus in print. There were no statements indicating that voters were expected to consult both sources. This makes it difficult to ascertain what information the typical member received from the Board.
- E. The continuation of the credit union to the federal regime is contrary to the credit union members' interests.
- a. The credit union's retained earnings of \$1 billion (2016) should remain in the communities from which they originated, in which the member-owners live, rather than being given to a new national organization. No discussion of this \$1 billion has occurred.
 - b. The regulations of the federal *Bank Act* degrade the interests of member-owners.
 - c. For dissenters, members' rights under section 59 of the *Credit Union Incorporation Act* have been rendered ineffective because the Board has created an institution in which it is practically impossible for dissenters to mobilize 10% of the voting membership.

Let me make some comments about FICOM's process:

1. FICOM should require a credit union seeking continuance to another jurisdiction to provide its members with a draft version of the bylaws by which it would operate thereafter.
2. FICOM should require a credit union seeking continuance to another jurisdiction to disclose and discuss conflicts of interest.
3. FICOM's 30-day period for public comment⁴⁶ is inadequate for an irreversible decision of such magnitude, which alters the essence of a 76-year-old, multi-billion-dollar British Columbia institution. This is particularly true because credit unions are co-operatives—institution based on democratic control by members of the community. Thirty days is not sufficient time for a minority group of members—non-professionals in this matter—to organize themselves and challenge the process, especially given the fact that the basis of the challenge is that the strategy of Coast Capital Savings has been to disempower members.
4. Further to my letters of March 21, 2017 and March 27, 2017, it is my view that further notice ought to have been given by the Commission of Coast Capital's application for continuance and that the Commission ought to have extended its deadline for receiving comments from the public. The comments herein are submitted to the Commission without prejudice to my rights to challenge the Commission's refusal to provide further notice or to extend the public comment period, and I expressly reserve my rights to challenge these deficiencies in process.
5. To facilitate public discussion, please post the comments you receive (including this letter and its attachments) on your website.

⁴³ See *No Discussion among Members*

⁴⁴ See *Voting Irregularities*

⁴⁵ See *Vote? Or Prize Draw?*

⁴⁶ FICOM, "Application for Consent to Continue a Credit Union to the Federal Credit Union Regime." CU-17-001, January 2017, page 5.

For all the reasons mentioned above, it is my position that the continuation of Coast Capital Savings to the federal regime is contrary to the members' interests and the members were not provided full and fair disclosure upon which to make their decision. I respectfully request that FICOM deny its consent for Coast Capital Savings to continue as a federal credit union.

Regards,



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