

Illustrative transaction instruction guide information requirements for a continuance followed by an immediate amalgamation with an FCU

Information Requirements¹

The following information is generally expected to be provided in support of an application to continue as a federal credit union and immediately amalgamate with another federal credit union.²

Specific to continuance

Amongst other considerations, the BA provides that the Minister may only issue Letters Patent if the Minister is of the opinion that the applicant has complied with the Disclosure on Continuance Regulations (Federal Credit Unions) (Regulations). In this regard, the Regulations specify that, at least four weeks before its members vote on a special resolution authorizing an application for Letters Patent, the prospective applicant must send a notice (the Disclosure Notice) to every member. The primary purpose of the Disclosure Notice is to inform members of the following:

- the day on which provincial deposit insurance coverage for the prospective applicant's depositors would end;
- a description of the Canada Deposit Insurance Corporation (CDIC) coverage that would apply during the transitional period to the deposits of the prospective applicant after its continuance as an FCU; and
- a description of the CDIC coverage that would apply after the transitional period to the deposits of the prospective applicant after its continuance as an FCU and how it differs from the pre-continuance provincial deposit insurance coverage.

The Disclosure Notice must be approved by the Superintendent in consultation with CDIC. As such, **a draft copy of the Disclosure Notice must be provided to OSFI for approval prior to the prospective applicant sending it to members.**

As provided for in the Regulations, the approved Disclosure Notice must be made available on the prospective applicant's website and in the prospective applicant's branches. The prospective applicant must also publish the information contained in the approved Disclosure Notice in the *Canada Gazette*, and in a newspaper with general

¹ Note that **highlighted** text is taken from the existing Continuance Guide and **deleted** text is proposed to be removed from the existing Amalgamation Guide. This document is for discussion/information purposes only, and therefore we have not tailored the information requirements to specifically account for the differences between banks and FCUs (i.e., in some places, it may be appropriate to refer to membership shares instead of ownership interests, etc.).

² The transaction instruction guide is drafted on the assumption that a small provincial credit union is seeking to continue and amalgamate with a larger FCU. Note that some of the information requirements may change depending on the relative size of the applicants (i.e. where the provincial credit union is larger than, or equal in size to, the FCU).

circulation in the province or territory in which the prospective applicant transacts business, once a week for the four weeks before its members vote on the special resolution.

Subsequent to a member vote authorizing the application for Letters Patent, OSFI will request that the prospective applicant provide an expected date for its submission of a formal application.³

Continuance and amalgamation⁴

1. the names of the applicants (and the name of the jurisdiction and date of incorporation or establishment of the local cooperative credit society⁵);
2. the rationale for the proposed amalgamation from the perspective of each federally regulated entity (FRE) applicant, and each applicant seeking to continue as an FRE prior to the amalgamation (where applicable), including details regarding the benefits that are expected to accrue to each of them;
3. where the name of the proposed amalgamated FRE (Amalco) is different from the name of the sole FRE applicant, ~~or in the case of multiple FRE applicants, all of their names,~~ the information required in Transaction Instruction A No. 5 – Change of Name – Letters Patent, with such modifications as are appropriate in the circumstances;
4. with regard to the applicants and any of their affiliates, details regarding whether the proposed amalgamation is subject to or will trigger any regulatory approval or notification requirement, other than under the Statutes (and where any of these requirements apply, confirmation that they have been met, together with the details of the related regulatory response, if any);
5. a confirmation that the local cooperative credit society applicant has complied with the Disclosure on Continuance Regulations (Federal Credit Unions), as well as:
 - a. a copy of the Disclosure Notice sent to members, and
 - b. a statutory declaration or affidavit by a representative of the newspaper and *Canada Gazette* pertaining to the dates that the information contained in the Disclosure Notice was published, along with a copy of the published information;⁶

³ Part (v), Continuance Guide.

⁴ A significant amount of due diligence is expected to be undertaken by the FCU and a robust integration plan should be presented with an application (clearly identifying the impact of the transaction on the risk profile of the FCU)—the speed with which OSFI will assess an application will be correlated to the quality of these submissions. For example, the FCU will be expected to have performed a thorough review of the credit files of the local cooperative credit society applicant, as well as self-assessments against the BA and all OSFI guidelines which demonstrate that Amalco will be substantially or materially compliant by day one (along with an action plan to address any gaps to bring Amalco into full compliance as soon as possible).

⁵ Section 1.1(a), Continuance Guide.

⁶ Section 2.9(c), Continuance Guide.

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6. proof of publication of the joint notice of intention to make an application for the issuance of Letters Patent (Notice);⁷
 7. a confirmation from each applicant that it has not received any objections related to the Notice or otherwise with regard to the proposed continuance and amalgamation, or has addressed any objection received (together with a description of the manner in which each objection has been addressed);
 8. in the case of **the local cooperative credit society applicant** ~~an applicant that is neither an FRC nor an entity seeking to continue as an FRC prior to the amalgamation,~~
 - a. ~~evidence that it is incorporated or formed by or under an Act of Parliament (e.g., under the *Canada Business Corporations Act*),~~ a certified copy of the constating documents and current company by-laws;⁸
 - b. the name and contact information of an individual from the applicant's regulator that is familiar with the applicant's activities;⁹
 - c. confirmation that the applicant's regulator is aware of the applicant's intention to continue as an FCU and confirmation that the applicant is authorized by the laws of the jurisdiction where it is incorporated to apply for Letters Patent;¹⁰
 - d. a report of the examination in respect of the applicant issued by its regulator or, if the report cannot be provided, any views that the regulator may provide regarding the applicant;¹¹
 - e. a copy of its most recent annual report;¹²
 - f. ~~its most recent~~ annual consolidated financial statements for the last three years,¹³ together with the related report of the auditor (where available), and its most recent interim financial statements;
 - g. a copy of the most recent report on the applicant issued by a recognized credit rating agency, if available;¹⁴
 - h. the current organization chart (with percentages owned) of the applicant, showing entities in which the applicant has a substantial investment (indicate by an asterisk whether any of the entities shown on the chart operate in Canada);¹⁵

⁷ Pursuant to section 34(1.1) of the BA, a single Notice can be published to include both the Notice required for the local cooperative credit society to apply to continue as an FCU, and the Notice required to apply to amalgamate.

⁸ Section 2.1(b), Continuance Guide.

⁹ Section 2.1(c), Continuance Guide.

¹⁰ Section 2.1(d), Continuance Guide.

¹¹ Section 2.1(e), Continuance Guide.

¹² Section 1.1(g), Continuance Guide.

¹³ Section 1.1(h), Continuance Guide.

¹⁴ Section 2.1(f), Continuance Guide.

¹⁵ Section 1.1(b), Continuance Guide.

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- i. the location(s) of the existing branch(es) and head office of the applicant in Canada;¹⁶
 - j. a detailed description of each of its business activities;
 - k. a detailed description of the business activities of any entities it controls or in which it holds a substantial investment, including a list of jurisdictions in which they operate and the nature and degree of regulatory oversight applicable to the financial services activities,¹⁷ and:
 - a. if the prospective applicant is of the view that the entity is a “regulated entity”, an analysis in support of the prospective applicant’s view, and
 - b. where the entity is not a “regulated entity”, a detailed analysis setting out why each of its business activities are authorized and not restricted,¹⁸ and
 - l. details of whether it, or any entity it controls or in which it holds a substantial investment, has been: i. denied a request to establish a financial institution or a branch in any jurisdiction,¹⁹ and ii. the subject of any administrative sanctions or convicted of any criminal offences;
9. where applicable, a description of the transactions involving each applicant that are proposed to be carried out in connection with the amalgamation both prior to and following the amalgamation (Connected Transactions), together with the rationale for the Connected Transactions and flow-charts depicting them;
 10. organizational charts showing the persons:
 - a. that currently hold a significant ownership interest (together with percentages owned) in each applicant,
 - b. who will hold a significant ownership interest (together with percentages owned) in Amalco upon the Letters Patent becoming effective, and
 - c. where applicable, who will hold a significant ownership interest (together with percentages owned) in Amalco upon the completion of the Connected Transactions that will occur after the amalgamation;
 11. the names of Amalco’s directors and senior officers, and the positions for each of them, and
 - a. where any such individual is a director or a senior officer of an FRE applicant, a confirmation from the FRE applicant that it is in compliance with Guideline E-17 – Background Checks on Directors and Senior Management of FREs, and
 - b. for each individual that is not currently a director or a senior officer of an FRE applicant:
 1. a completed OSFI Security Information Form,
 2. details of whether the individual and/or any entity in which the individual is or was a director or senior officer, have been the subject of any administrative sanctions or convicted of any criminal offences, and

¹⁶ Section 1.2(d), Continuance Guide.

¹⁷ Section 1.1(f), Continuance Guide.

¹⁸ Section 1.1(c), Continuance Guide.

¹⁹ Section 1.1(i), Continuance Guide.

3. the individual's current curriculum vitae demonstrating that the individual has the necessary qualifications and expertise to manage or direct Amalco's business;
12. a *pro forma* balance sheet for each applicant, and a *pro forma* capital position for each FRE applicant (and liquidity position, ~~where the FRE applicant is a deposit-taking institution~~), immediately before the proposed amalgamation, together with relevant assumptions;
13. a *pro forma* balance sheet and capital position (and liquidity position, ~~where Amalco will be a deposit-taking institution~~) for Amalco immediately following the proposed amalgamation that confirms compliance with Amalco's proposed internal target(s), together with relevant assumptions and a breakdown of:
 - a. in the case where Amalco will be a deposit-taking institution, all elements used to calculate:
 1. the capital ratios, in accordance with the *Capital Adequacy Requirements Guideline*,
 2. the leverage ratio, in accordance with the *Leverage Requirements Guideline*, and
 3. the liquidity coverage ratio, in accordance with the *Liquidity Adequacy Requirements Guideline*,
 - b. ~~in the case where Amalco will be a life insurance company or a fraternal benefit society, all elements used to calculate the Life Insurance Capital Adequacy Test, or~~
 - c. ~~in the case where Amalco will be a property and casualty insurance company, all elements of the Minimum Capital Test;~~
14. a business plan for Amalco, together with three years of financial projections, including income statement, balance sheet, capital ratios and key assumptions—and ~~in the case where Amalco will be a deposit-taking institution~~, the liquidity coverage ratio;
15. an integration plan for Amalco;
16. if Amalco's financial position or business strategy will be materially different from ~~each~~ **the** FRE applicant's:
 - a. ~~in the case where Amalco will be a deposit-taking institution~~, an internal solvency assessment process document (e.g., Internal Capital Adequacy Assessment Process) for Amalco,
 - b. ~~in the case where Amalco will be an insurance company or a fraternal benefit society, a scenario stress testing report (e.g., Dynamic Capital Adequacy Testing), together with a risk assessment report (e.g., the proposed Own Risk and Solvency Assessment for Amalco), in support of Amalco's proposed internal target,~~
 - c. where applicable, a description of the anticipated material differences between each FRE applicant's risk appetite framework and Amalco's, and
 - d. where any FRE applicant has a recovery plan, a description of the material revisions that will be made to the plan, including the timelines outlining when the revisions will be made; and
17. where any transitional permission is requested, details regarding the nature of the activity as well as the rationale for, and the requested duration of, the permission.
18. details regarding the due diligence that each FRE applicant, and each applicant seeking to continue as an FRE prior to the amalgamation, has carried out with regard to the other applicant(s), and the views of each such applicant regarding the results of the due diligence;

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19. a copy of the executed version of the amalgamation agreement that will be submitted for approval by special resolution of the shareholder(s), members and/or policyholders entitled to vote, as the case may be, of each applicant;
 20. any other agreement between the applicants that relates to the implementation of the amalgamation;

Minister's Issuance of Letters Patent

~~Where the applicants seek to proceed with a long-form amalgamation,~~ Each applicant is generally expected to provide the following information in support of the joint application to the Minister for the issuance of Letters Patent:

21. where applicable, a copy of the materials sent to the shareholders or members of each FRE applicant, and each applicant seeking to continue as an FRE prior to the amalgamation, in connection with the meeting to approve the amalgamation agreement by special resolution (the "Voting Package"), together with the date on which the Voting Package was sent;
22. **in the case of the local cooperative credit society, a certified copy of the special resolution authorizing the applicant to apply for Letters Patent²⁰;**
23. a certified copy of the special resolution approving the amalgamation agreement;
24. where applicable, a confirmation that the meeting during which the special resolution was passed took place in accordance with the requirements of the applicant's by-laws and the statute governing the applicant.

²⁰ Section 2.1(g), Continuance Guide.

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