

September 27, 2017

Director
Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, Ontario K1A 0G5
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Tel: 613-369-9347

Attn: Director

Dear Sir or Madame;

Re: Submission in respect to Invitation for Comments

I am writing on behalf of the Board of Directors and management of **XXX**, and I am pleased to set out below **XXX**'s response to the Department of Finance Canada's invitation for comments with respect to the "*Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future*" consultation paper, dated August 11, 2017.

By way of background, **XXX** is an incorporated Ontario Credit Union that has, from its establishment in **XXX**, grown along with the **XXX** that it primarily serves, to its current position through which it administers approximately **XXX** in assets on behalf of its members. Throughout that time, **XXX** has, by virtue of its constitution, been regulated by the Deposit Insurance Corporation of Ontario (DICO), and it has served its members without issue or interruption and has consistently maintained and exceeded all of the standards that have been established for it by DICO's requirements and regulations.

During that same period, DICO has proven to be an effective regulator of credit unions in Ontario. It has developed a high level of expertise in the oversight of credit unions, which it has been able to complement with a deep understanding of the communities and members that credit unions serve. Without fail, members' interests have been protected, and of particular note to this submission – no regulatory intervention has ever been required with respect to any credit union's use of the words "bank", "banker" and "banking" (Banking Words). This point is best made by the fact that DICO and OSFI deliberately forbore from enforcing section 983(2.1) of the *Bank Act* as against any credit union from the section's inception (2007) through to the present, even though credit unions were openly using Banking Words throughout that time. **XXX** would also be remiss if it did not point out that during that same time period credit unions in particular, and the financial services sector in general, have both flourished.

With respect to Advisory 2017-01 and its proposed enforcement of section 983(2.1) of the *Bank Act* as against credit unions, **XXX**'s position is that it is not only unnecessary, it would actually cause significant harm. If the Advisory is implemented against credit unions, it would undoubtedly impose a significant financial burden on credit unions and their members, but more importantly it would create real confusion and uncertainty. Existing members would not understand what had changed in our operations, and prospective members would be left confused as to what services we are offering.

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While **XXX** appreciates the stated intent of section 983(2.1) of the *Bank Act* is to prevent confusion, we have to stress that if Advisory 2017-01 is implemented, it will have the opposite effect. It will deprive members and prospective members of their right to understand and make informed choices related to their self fulfilment in connection with, for example, their savings, the financing of their businesses, homes, and educations, and the like. That poses a serious problem both from practical and legal perspectives.

From the practical perspective, if the Advisory is implemented, it may have unintended results. Many credit unions may apply for federal regulation and OSFI may not be equipped to regulate so many credit unions of different sizes. Secondly, it is unclear whether or not the smaller credit unions will be able to afford the costs associated with changing regulator. These implications, if they can be managed, will be enormous. Further, given that the implications will result from trying to fix a system that isn't broken (at least as regards credit unions), and which in fact has been working quite well without any meaningful problems for the past 10 years, the proposed change calls the entire exercise into question.

From the legal perspective, the potential for confusion and harm that the enforcement of section 983(2.1) of the *Bank Act* poses, raises serious questions about whether the proposed restrictions on credit unions' rights to freedom of expression, and to their members' rights to access the meanings that will be restricted, can be justified. **XXX** has consulted with legal counsel on this issue and is prepared, if it has to, to protect itself and its members' interests by pursuing such legal remedies as may be appropriate.

Having noted that, **XXX** is also aware that section 983(12) of the *Bank Act* allows OSFI to exempt anyone from the enforcement of section 983(2.1) of the *Bank Act*. Given the very serious effects that the implementation of Advisory 2017-01 would have on **XXX's** ability to express itself and the services it provides, and given **XXX's** proven track record as a credit union that has met and or exceeded all applicable regulatory standards, it will be applying for a section 983(12) *Bank Act* exemption, should the Advisory be implemented. In that regard, **XXX** reserves all rights it may have to challenge or review any refusal to grant it an exemption.

In conclusion, **XXX** makes these submissions given the unique situation in which it finds itself with respect to Advisory 2017-01. Given that context, **XXX** asks that its specific submission be read as supplemental to the submissions that are to be submitted by the Canadian Credit Union Association, and it trusts that it is understood that the minimal value, if any, in restricting its, and other credit unions', use of Banking Words, is far outweighed by the larger public policy issues that have been outlined above.

Yours truly,

XXX

President and Chief Executive Officer