STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of additional powers for Michigan chartered low-income credit unions **Order No. 08-027-M**

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Issued and entered
this 20th day of June 2008
by Ken Ross
Commissioner

ORDER AUTHORIZING LOW-INCOME DOMESTIC CREDIT UNIONS TO EXERCISE ADDITIONAL POWERS

I
BACKGROUND

On January 3, 2008, Communicating Arts Credit Union ("CACU") applied for:

> ...rights and benefits that a federal credit union that has the low-income designation enjoys, especially the ability to accept non-member shares, share drafts, share certificates, and secondary capital as described in the Federal Credit Union Act.

CACU is a Michigan state-chartered credit union ("SCU"). It was chartered under the Michigan Credit Union Act ("MCUA"), MCL 490.101 *et seq*. CACU was designated a "low income" credit union by the National Credit Union Administration ("NCUA") on August 10, 2007.

The MCUA does not address "low-income" credit unions. However, a low-income credit union is defined in 12 CFR Part 701 (2008) of the NCUA Rules and Regulations ("Rules") as a credit union with a majority of members that either earn less than 80 percent of the average of all wage earners, as established by the Bureau of Labor Statistics, or have an annual household income that falls at or below 80 percent of the median household income for the nation as established by the Census Bureau. 12 CFR §701.34.

Low-income designated credit unions may:

- Accept non-member deposits. 12 CFR §701.34 (2008).
- Participate in the Community Development Revolving Loan Program. 12 CFR §705.3 (2008).
- Offer secondary capital accounts. 12 CFR §701.34 (2008).
- Qualify for exception from the aggregate loan limit for member business loans. 12 CFR §§723.16 and 723.17 (2008).

NCUA has approved the low-income designation for a number of Michigan SCUs. These credit unions, however, have been unable to exercise all the powers available to low-income designated federally-chartered credit unions ("FCUs") because of various, general MCUA restrictions.

The CACU applies for additional powers for itself. However, as indicated in the discussion below, additional powers will benefit all Michigan low-income SCUs. These powers are appropriate and necessary for these credit unions to compete with other providers of financial services.

II
ISSUES

The principal issues are:

1. Is the Commissioner authorized under the MCL 490.208 to grant additional powers to low-income SCUs if those powers are appropriate and necessary to compete with other providers of financial services in this state?

2. Taking into consideration the factors listed in MCL 490.208(2), are the additional powers warranted?

III
ANALYSIS

Authority for Granting Additional Powers

MCL 490.208(1) gives the Commissioner the authority to grant additional powers to domestic credit unions where they are "appropriate and necessary" for them to compete with other providers in this state:

> If 1 or more domestic credit unions apply for authority to exercise powers not specifically authorized by this act, the commissioner may by rule, order, or declaratory ruling authorize domestic credit unions to exercise those powers if the commissioner finds that those powers are appropriate

> and necessary to compete with other providers of financial services in this state.

Factors the Commissioner shall consider

MCL 490.208(2) specifies factors the Commissioner shall consider in making a determination as to additional powers:

> In acting under subsection (1), the commissioner shall consider the ability of the domestic credit unions to exercise the additional power in a safe and sound manner, the authority of the domestic credit unions under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on domestic credit union powers contained in this act or in any rules or other law of this state.

Competition

The additional powers available to low-income designated FCUs, which include accepting non-member deposits, participation in the Community Development Revolving Loan Program, offering secondary capital accounts, and qualifying for exemption from member business loan aggregate limits, are appropriate for Michigan SCUs.

Authorizing low-income designated SCUs to obtain nonmember deposits and secondary capital will expand funding sources to provide credit and services to their memberships and communities. Explicit authority to access NCUA administered loan and grant programs will have similar benefits. Exemption from NCUA's business lending limits will allow these credit unions to increase small business lending, which can benefit their individual members and the communities in which they operate.

The requested powers are already available to low-income designated FCUs. Authorizing low-income designated SCUs to exercise the powers available to their federally-chartered counterparts will level the competitive playing field among credit unions operating in Michigan. The additional powers will also enable these SCUs to compete more effectively with other financial services providers that already have access to external capital and have fewer restrictions on business lending.

Safety and soundness

Other depository financial institutions exercise the same or similar powers safely and soundly. The requested additional powers are authorized by NCUA, the agency insuring SCU member deposits, for low-income designated FCUs.

The ability to qualify for exemption from aggregate member business lending limits warrants scrutiny. However, any concern in this regard is mitigated by the fact that the Rules do not raise individual borrower exposure limits and they require the NCUA to obtain state regulator concurrence before approving a low-income designation for a SCU.

Authority of domestic credit unions

MCL 490.361(2) generally permits use of secondary capital other than capital stock if authorized by the federal regulatory authority with jurisdiction, which, in this case, is the NCUA.

The Rules allow a SCU to exercise the powers of a low-income credit union where approved by the Commissioner. The Commissioner is allowed to authorize additional powers by MCL 490.208.

Powers of competing entities

SCUs compete with FCUs, and those FCUs with the low-income designation have the advantage of the additional powers conferred under the Rules. Moreover, several other financial services providers, such as banks, have within their powers to access external capital and have fewer restrictions on business lending.

Specific limitations

No provisions in the MCUA establish any limitations specific to low-income credit union powers. No specific limitations preclude authorization under MCL 490.208 of the requested additional powers.

IV
FINDINGS OF FACT

Based upon the foregoing considerations, it is found that:

1. Additional powers are appropriate and necessary for low-income domestic state credit unions to compete with low-income FCUs and other providers of financial services in this state.

2. Low-income domestic credit unions have the ability to exercise the additional powers conferred upon low-income FCUs in a safe and sound manner.

V
CONCLUSIONS OF LAW

Based upon a review of applicable laws, it is concluded that:

1. Under MCL 490.208, the Commissioner may authorize, by order, a domestic credit union to exercise powers not specifically authorized under the MCUA if the Commissioner finds that those powers are appropriate and necessary to compete with other providers of financial services in this state.

2. MCL 490.361 generally permits use of secondary capital other than capital stock if authorized by the federal regulatory authority with jurisdiction, which, in this case, is the NCUA. The Rules allow a SCU to exercise the powers of a low-income credit union where approved by the Commissioner. The Commissioner is allowed to authorize additional powers by MCL 490.208.

3. FCUs with the low-income designation have the advantage of the additional powers conferred under the Rules. Several other financial services providers, such as banks, have within their powers to access external capital and have fewer restrictions on business lending.

4. No provisions in the MCUA establish any limitations specific to low-income credit union powers. No specific limitations preclude authorization under MCL 490.208 of the requested additional powers.

VI
ORDER

Therefore, it is ORDERED that domestic credit unions that have been approved for the low-income designation by NCUA are authorized to exercise all powers available to low-income designated FCUs.

Ken Ross
Commissioner