STATE OF MICHIGAN
DEPARTMENT OF ENERGY, 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 state-chartered credit unions **Order No. 09-012-M**

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Issued and entered
this 3rd day of March 2009
by Ken Ross
Commissioner

ORDER AUTHORIZING STATE CHARTERED CREDIT UNIONS TO EXERCISE ADDITIONAL POWERS

I
BACKGROUND

On December 4, 2008, Lake Michigan Credit Union ("LMCU") requested that the Commissioner exercise its authority under MCL 490.208, Section 208 of the Michigan Credit Union Act ("MCUA"), to:

> allow credit unions to acquire assets and assume liabilities, including deposits of depository institutions other than credit unions, in purchase and assumption contracts.

LMCU is a Michigan state-chartered credit union ("SCU"). It was chartered under the MCUA, MCL 490.101 *et seq.*

The LMCU has applied for additional powers for itself. However, as indicated in the discussion below, those additional powers will benefit all Michigan state chartered credit unions. 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. Whether the Commissioner is authorized under the MCL 490.208 to grant additional powers to 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.

Authority of state-chartered credit unions

MCL 490.401(q) authorizes SCUs "to purchase any of the assets of another domestic credit union, or with the approval of the Commissioner, assume any of the liabilities of another domestic credit union." Further, MCL 490.371 permits SCUs to enter into a plan

of merger with another credit union. Section 371 specifically permits the merger of (1) one or more domestic credit unions, or (2) one or more domestic credit unions with one or more foreign credit unions. Under MCL 490.208, the Commissioner is allowed to authorize additional powers to domestic credit unions.

Specific limitations

The provisions of the MCUA do not specifically prohibit a SCU from purchasing the assets and assuming the liabilities of a non-credit union depository institution. Further, no specific limitations preclude authorization under MCL 490.208 of the requested additional powers.

Competition

Authorizing domestic credit unions to acquire assets and assume liabilities, including deposits of depository institutions other than credit unions, in purchase and assumption contracts will better enable SCUs to compete with Federally Chartered Credit Unions ("FCUs") and other non-credit union depository institutions.

SCUs compete with FCUs, and FCUs have the authority to merge with a non-NCUSIF insured institution, subject to NCUA approval, under Section 205(b)(1)(a) of the Federal Credit Union Act, 12 U.S.C. 1785(b)(1)(a).

SCUs also compete with domestically chartered non-credit union depositories, and those competitors already have the authority to enter into such merger transactions, subject to Commissioner approval, including Michigan Savings Banks under MCL 487.3336, and Michigan Banks under MCL 487.1410.

As the requested powers are already available to FCUs, authorizing 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 non-credit union financial services providers. Other domestically chartered non-credit union depositories already have the authority to enter into such transactions after receiving Commissioner approval, including Michigan Savings Banks, as authorized under MCL 487.3336 and Michigan Banks under MCL 487.1410. Furthermore, federal credit unions are provided the authority to merge with a depository institution that is not insured by the National Credit Union Share Insurance Fund ("NCUSIF"), subject to National Credit Union Administration ("NCUA") approval, under Section 205(b)(1)(a) of the Federal Credit Union Act, 12 U.S.C. 1785(b)(1)(a).

Safety and soundness

The proposed change would allow the acquisition of non-credit union assets such as those held by banks. The exercise of this additional power would require the Commissioner's prior approval, as required for the use of similar powers by other domestic and federal

depositories. In Section 401(q), domestic credit unions are currently afforded the power "to purchase any of the assets of another domestic credit union, or with the approval of the Commissioner assume any of the liabilities of another domestic credit union." (MCL 490.401(q)). By requiring the Commissioner's approval of such transactions, the public and the acquiring credit union will be protected from the acquisition of potentially unsound assets and/or unacceptable liabilities from non-credit union depositories.

IV
FINDINGS OF FACT

Based upon the foregoing considerations, it is found that:

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

2. State-chartered credit unions have the ability to exercise the additional powers in a safe and sound manner, with the Commissioner's prior approval.

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. Pursuant to MCL 490.401(q) domestic credit unions are afforded the power "to purchase any of the assets of another domestic credit union, or with the approval of the Commissioner assume any of the liabilities of another domestic credit union." Further, MCL 490.371 permits SCUs to enter into a plan of merger with another credit union. Section 371 specifically permits the merger of (1) one or more domestic credit unions, or (2) one or more domestic credit unions with one or more foreign credit unions. The Commissioner is allowed to authorize additional powers by MCL 490.208.

3. Under the MCUA, no specific limitations preclude authorization under MCL 490.208 of the requested additional powers.

VI
ORDER

Therefore, it is ORDERED that

(1) With the approval of the Commissioner, based upon an examination or other appropriate analysis of either the buying or selling organization, or both, and upon the affirmative vote of a majority of the members of its board of directors a domestic credit union may purchase all or substantially all of the assets of every kind, character, and description and assume the liabilities of another non-credit union depository institution.

(2) Such a purchase shall not be made to defeat or defraud any of the creditors of the depository institutions.

(3) Certified copies of all directors' proceedings under this section shall be submitted to the Commissioner and shall contain the terms of the sale and purchase, including a copy of the purchase agreement.

(4) The liability of a depository institution or of its shareholders, directors, or officers, or the rights of creditors of, or other persons transacting business with, the depository institution shall not be lessened or impaired as the result of a sale of assets under this section.

(5) Notwithstanding any other provision of this act, a credit union that purchases or assumes all or substantially all of the assets or liabilities of a depository institution may retain, maintain, and operate the principal office or branches of the depository institution as branches of the purchasing credit union without providing notice to the Commissioner provided it assumes the deposit liabilities of the depository institution maintained at the principal office or branches.

Ken Ross
Commissioner