



**ASIC**  
Australian Securities &  
Investments Commission

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## Contents

Notices under Corporations Act 2001

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**Australian Securities and Investments Commission  
Notice ceasing the application of specified constitutional rules**

**Written Notice**

1. This is a notice by the Australian Securities and Investments Commission (*ASIC*) of the kind described in clause A6.1.3 of Appendix 6 to the constitution of First Choice Credit Union Limited ACN 087 649 867 (the *Company*).

**Commencement**

2. This notice takes effect when ASIC has published it and given a copy of it to the Company.

**Background**

3. The Company has requested that ASIC publish a notice that Schedule 6 (other than clause A6.1.4) to the Company's constitution ceases to have effect in relation to a proposed resolution to be put to members at a Special General Meeting on 7 December 2023, and give a copy of the notice to the Company.
4. ASIC Report 369 *Response to submissions on CP 210 Demutualisation approval procedure rules: Minimum member participation requirement* outlines the two situations in which ASIC will issue a written notice disapplying rules such as those in Appendix 6 to the Company's constitution. Those two situations are:
  - (a) where an entity's circumstances raise potential prudential concerns, and the Australian Prudential Regulation Authority considers it necessary for a particular proposed transaction to occur expeditiously; and
  - (b) where the only trigger for the application of the rules is the adoption of 'mutual bank' status and branding by an entity.
5. The Company is a credit union and proposes to hold a special resolution of its members at the 7 December 2023 Special General Meeting for their approval for a total transfer of the Company's business to Beyond Bank Australia Limited (*Beyond Bank*). This is the resolution in respect of which the Company has sought to have Schedule 6 disappplied.
6. A scenario in which Appendix 6 in the Company's constitution is triggered is set out in paragraph A6.1.1(3)(f):

*First Choice (whether acting through its board, its members or otherwise) proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure: ... (f) the successor to First Choice's business is not*

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entitled to use either the words 'credit union', or 'credit society' or 'credit co-operative' in its name.

7. Beyond Bank is a mutual authorised deposit-taking institution that, in 2018, adopted the term 'bank' in its name. A consequence of adopting the term 'bank' was that Beyond Bank was no longer permitted under the *Banking Act 1959* to use the term 'credit union' in its name.
8. ASIC considers that the Company's request is consistent with the policy referred to in paragraph 4(b) and publishes and gives this notice on that basis.

#### **Cessation**

9. Appendix 6 (other than clause A6.1.4) to the Company's constitution ceases to have effect in relation to the Company, subject to paragraphs 10 to 15 of this notice.

#### **Transfer of business resolution**

10. Paragraph 9 of this notice applies only in relation to a resolution (*Transfer of Business Resolution*), to be considered by the Company's members at a Special General Meeting on 7 December 2023, the effect of which, if approved by members, would be to allow for the total transfer of the Company's business to Beyond Bank in accordance with the *Financial Sector (Transfer and Restructure) Act 1999* (*Transfer Act*).
11. Appendix 6 to the Company's constitution continues to have effect on its terms in relation to a resolution other than the Transfer of Business Resolution.

#### **Conditions**

12. The Company must convene and conduct its 7 December 2023 Special General Meeting in accordance with the *Corporations Act 2001* (*Corporations Act*), the Transfer Act and the terms of its constitution other than Appendix 6. The Company must consider the Transfer of Business Resolution as a special resolution.
13. The Company must ensure that the notice of meeting for the Company's 7 December 2023 Special General Meeting clearly states that ASIC has issued this notice to cease the effect of Appendix 6 (other than clause A6.1.4) to the Company's constitution in relation to the Transfer of Business Resolution, and either:
  - (a) include a copy of this notice; or
  - (b) include a web address of the page on ASIC's website where this notice is published.

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14. The Company must ensure that the Transfer of Business Resolution is only passed at the Company's 7 December 2023 Special General Meeting if at least 75% of the votes cast by members entitled to vote on the Transfer of Business Resolution approve the Transfer of Business Resolution.
15. If the Company does not comply with any of the conditions in paragraphs 12 to 14, this notice ceases to have effect in relation to the Transfer of Business Resolution.

#### Interpretation

16. In this notice:

*member* has the meaning given by the constitution of the Company as at the date of this notice.

*notice of meeting* has the meaning given by section 249J of the Corporations Act.

*Special General Meeting* means a general meeting of the *members* and of *MCI holders* eligible to vote in general meeting, and includes Annual General Meetings.

*special resolution* means a resolution:

- (a) in relation to which notice as set out in paragraph 249L(1)(c) of the Corporations Act has been given; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution

Dated this 15th day of November 2023



Signed by Nathan Bourne  
as a delegate of the Australian Securities and Investments Commission