

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL & PROFESSIONAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of)
)
SmartChoice Credit Union) No. 20CU101
Charter No.: 1893)

To: SmartChoice Credit Union
Attn: Vickie Chiesi
1 Les Buzz Way
Spring Valley, Illinois 61362

CIVIL PENALTY ORDER

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, DIVISION OF FINANCIAL INSTITUTIONS (“Department”), is statutorily charged with administration of the Illinois Credit Union Act, 205 ILCS 305/§1 to *et seq.*, (“Act”) and the Rules promulgated thereunder, 38 Ill. Admin. Code §190.2 *et seq.*, (“Rules”). Pursuant to its authority under Illinois law, the Department has investigated the activities of SmartChoice Credit Union and determined that SmartChoice Credit Union has engaged in acts or practices constituting violations of the Act or Rules. Based upon its review, the Department hereby issues this Order:

STATUTORY PROVISIONS AND APPLICABLE RULES

1. Section 8(6) of the Act states, in pertinent part:

To assess a civil penalty against a credit union provided that:

- (A) the Secretary reasonably determines, based on objective facts and an accurate assessment of applicable legal standards, that the credit union has:
 - (i) committed a violation of this Act, any rule adopted in accordance with this Act, or any order of the Secretary issued pursuant to his or her authority under this Act; or
 - (ii) engaged or participated in any unsafe or unsound practice;
- (B) before a civil penalty is assessed under this item (6), the Secretary must make the further reasonable determination, based on objective facts and an accurate assessment of applicable legal standards, that the credit union’s action constituting a violation under subparagraph (i) of paragraph (A) of item (6) or an unsafe and unsound practice under subparagraph (ii) of paragraph (A) of item (6):

- (i) directly resulted in a substantial and material financial loss or created a reasonable probability that a substantial and material financial loss will directly result; or
 - (ii) constituted willful misconduct or a material breach of fiduciary duty of any director, officer or committee member of the credit union
- (C) before a civil penalty is assessed under this item (6), the credit union must be expressly advised in writing of the:
 - (i) specific violation that could subject it to a penalty under this item (6); and
 - (ii) specific remedial action to be taken within a specific and reasonable time frame to avoid imposition of the penalty . . .
- (E) a credit union's failure to take timely remedial action with respect to the specific violation may result in the issuance of an order assessing a civil penalty up to the following maximum amount, based upon the total assets of the credit union:
 - (i) Credit unions with assets less than \$10 million\$1,000.
205 ILCS 305/§8(6)(E)(i).

2. Title 38 Section 190.15 of the Illinois Administrative Code states:

As provided in Section 8(6) of the Act, the amount of time specified by the Department, at the Secretary's or his or her designee's discretion, within which the credit union must remediate the specific violations shall depend on the nature and extent of the remedial action to be taken. All remedial actions must be performed to the satisfaction of the Secretary or his or her designee. Additional time for remediation may be granted at the Secretary's or his or her designee's discretion for good cause upon written request made in good faith by the credit union.

3. Title 31 Part 1010.520(3) of Code of Federal Regulations states in part:

Obligations of a financial institution receiving an information request—(i) Record search. Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request . . .

FACTUAL FINDINGS

4. SmartChoice Credit Union is an Illinois state-chartered credit union with a physical location of, 1 Les Buzz Way Spring Valley, Illinois 61362.
5. SmartChoice Credit Union currently has assets less than \$1,000,000.
6. A Document of Resolution (DOR) was issued to Smart Choice Credit Union during the December 31, 2014, examination noting that required FinCEN searches had not been expeditiously completed. The Department required SmartChoice Credit Union to take remedial action by expeditiously completing all required FinCEN searches.
7. On April 30, 2015, a special contact/follow up was completed. The Department determined that required FinCEN searches were still not being expeditiously completed and issued a repeat Document of Resolution.
8. During the December 31, 2015, examination the Department determined that required FinCEN searches were still not being expeditiously completed and the issue was further noted in the Document of Resolution Status section of the report.
9. During the March 31, 2017, examination the Department determined that required FinCEN searches were not still not being expeditiously completed and the issue further noted in the Examiner's Findings section of the examination report.
10. During the September 30, 2018, examination the Department determined that required FinCEN searches were still not being expeditiously completed by the SmartChoice Credit Union and issued a Document of Resolution. *See* 2018 Document of Resolution *attached as* "Exhibit 1." The Department required SmartChoice Credit Union to take remedial action by
11. On September 16, 2019, the Department issued a \$1,000 Civil Penalty Order against SmartChoice Credit Union for its failure to expeditiously complete all required FinCEN searches.
12. SmartChoice Credit Union paid the civil penalty on or about December 1, 2019.
13. During the March 31, 2020, examination the Department determined that required FinCEN searches were still not being expeditiously completed by the SmartChoice as required by the 2018 Document of Resolution.

LEGAL FINDINGS

14. SmartChoice Credit Union is a financial institution required to expeditiously complete all required FinCEN searches pursuant to Title 31 Part 1010.520(3) of Code of Federal Regulations.

15. Between September 17, 2019, and March 31, 2020, the SmartChoice Credit Union failed to comply with Title 31 Part 1010.520(3) of Code of Federal Regulation and the 2018 Document of Resolution by expeditiously completing all required FinCEN searches.
16. SmartChoice Credit Union's repeated failure to expeditiously complete all required FinCEN searches as required by law constitutes a material breach of fiduciary duties.
17. SmartChoice Credit Union's failure to expeditiously complete all required FinCEN searches constitutes an unsafe and/or sound business practice.

NOW IT IS HEREBY ORDERED THAT:


The SMART CHOICE CREDIT UNION shall pay a **CIVIL PENALTY** in the amount of One Thousand Dollars (\$1,000) to the Illinois Department of Financial and Professional Regulation, Division of Financial Institutions **by August 28, 2020**. Payment shall be made to the Illinois Department of Financial and Professional Regulation and shall be delivered with tracking information to the Illinois Department of Financial and Professional Regulation, Division of Financial Institutions, Credit Union Section Attn: Tim Marley, 320 W. Washington Street, Suite 550, Springfield, Illinois 62786.

Pursuant to the Act, the Civil Penalty Order shall take effect upon service of the order, unless the SmartChoice Credit Union requests, in writing, within 90 days after the date of service, a hearing. Service shall be deemed completed when the notice is deposited in the U.S. Mail. Please send a request for a hearing in this matter by electronic mail to David.Berland@Illinois.gov or mail to Illinois Department of Financial & Professional Regulation, Attn: David Berland, 100 W. Randolph St. 9th Floor, Office 147, Chicago, Illinois, 60601. Absent a request for a hearing, this Order shall constitute a final administrative order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et. seq.*

Dated this 28th day of July 2020

**FRANCISCO MENCHACA
DIRECTOR, DIVISION OF FINANCIAL INSTITUTIONS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

By,


Rob Finney
Acting Supervisor, Credit Union Section

AFFIDAVIT OF SERVICE

State of Illinois ()
(ss:
County of Cook ()

The undersigned, being duly sworn on oath, states that on July 29, 2020, a true copy of the foregoing Civil Penalty to be served on the party named below, by causing the same to be sent via United Parcel Service.

(tracking number 1Z 601 342 03 7261 5116)

to the following address:

SmartChoice Credit Union
Attn: Vickie Chiesi
1 Les Buzz Way
Spring Valley, Illinois 61362



Tim Webb
Office Coordinator

Subscribed and sworn to before me,

this 29 day of July 2020



NOTARY PUBLIC

OFFICIAL SEAL
Philip S Sanson
Notary Public, State of Illinois
My Commission Expires 3-12-2021