Office of the Superintendent of Financial Institutions Canada
Bureau du surintendant des institutions financières Canada

Guideline Impact Analysis Statement

Draft Guidelines E-4A and E-4B

Role of the Chief Agent and Record Keeping Requirements
Role of the Principal Officer and Record Keeping Requirements

I. Background

In order to provide more clarity with respect to requirements relating to the operation of foreign life insurance branches in Canada, in 1992 the Office of the Superintendent of Financial Institutions (OSFI) issued Guideline E-4, *Role of the Canadian Chief Agent and Record Keeping Requirements*.

In 1999, the *Bank Act* (BA) was amended to permit foreign banks to also operate in Canada on a branch basis. While OSFI has issued a number of documents related to foreign bank branches (FBBs), including the *Guide to Foreign Bank Branching*, it has not issued a formal guideline with respect to the role of the principal officer or record keeping requirements.

A number of factors, including the growing prevalence of foreign bank branches led OSFI to review its current guidance for branches. The review considered the merits of expanding application of the Guideline to all foreign financial institution branches (FFIBs) and the need for amendments in light of the introduction of OSFI's Supervisory Framework and other new guidelines that apply to FFIBs.

II. Problem Identification

Guideline E-4 does not reflect a number of legislative and regulatory changes that have occurred since the Guideline was originally released:

1. Despite the similar expectations OSFI has of the chief agents (CAs) and principal officers (POs) of foreign insurance company branches and FBBs respectively, the current Guideline applies only to Life branches. Guideline E-4 has not been amended (or other guidelines issued) to establish similar expectations for P&C and fraternal benefit society branches and their CAs or FBBs and their POs. The resulting lack of transparency may make it difficult for FBB, P&C and fraternal branches to comply with OSFI's expectations and contributes to the perception of an unlevel playing field.

2. The current Guideline does not reflect OSFI's Supervisory Framework or recognize a number of other OSFI guidelines applicable to FFIBs issued subsequent to the release of E-4 in 1992 (e.g., the corporate governance, outsourcing, and legislative compliance management guidelines). As a result, there is a potential that E-4 is not consistent with these guidelines or sends conflicting messages to CA/POs.

III. Objectives

Based on the foregoing, the objectives of revising Guideline E-4 are to:

1. Broaden the application of OSFI's guidance to include Life, P&C and fraternal branches and FBBs.
2. Reflect both OSFI's approach to supervision (as outlined in its Supervisory Framework), and other OSFI guidelines that impact the operations of FFIBs.
3. Clarify OSFI's expectations with respect to the role of the CA and PO.
4. Provide further detail on information and record keeping requirements, particularly in respect of FBBs.

IV. Identification and Assessment of Options

Option 1 - Status Quo - Do not revise Guideline E-4 or take other steps to achieve the objectives outlined in this Analysis Statement.

In the short term, this option would not present incremental costs to either OSFI or to FFIBs, and could be seen as minimizing regulatory burden.

However, this option would perpetuate an unlevel playing field because the current Guideline does not apply to P&C and fraternal branches or to FBBs. As such, these entities may not be fully aware of OSFI's expectations. This can pose problems for OSFI's supervision of foreign branches, especially if the level of involvement and responsibility demonstrated by CAs and POs is inadequate. Without further guidance, some FFIBs may be exposed to increased risks due to insufficient or inappropriate policies and procedures. OSFI would also face increased risks should FFIBs experience difficulties.

Option 2 – Revise Guideline E-4 to address the objectives in this Analysis Statement.

This option would involve applying OSFI resources to revise Guideline E-4 to expand its application beyond Life branches to include P&C and fraternal branches and FBBs. This would ensure that all types of entities are subject to similar and transparent expectations.

Unlike Option 1, OSFI would incur costs related to revising Guideline E-4, including the consultative process. However, these costs should be relatively small. The revised Guideline would also provide consistent expectations against which all FFIBs can be assessed by OSFI. Finally, revising the guideline would demonstrate that OSFI is proactively ensuring that its guidance remains up-to-date and consistent with its risk based Supervisory Framework.

This option could pose higher incremental costs to FFIBs as more FFIBs would likely be required to enhance their policies and procedures. However, FFIBs will benefit from clearer and more consistent expectations. In particular, by upgrading policies and procedures, FFIBs exposure to operational and legal/compliance risks should be reduced. In addition, many

CA/POs have expressed a desire for additional guidance with respect to their role in managing the operations of FFIBs.

Option 3 - Revise the existing Guideline E-4 pursuant to Option 2, but create a separate guideline applicable to FBBs.

This option would allow for clear recognition of the operational differences between the insurance and banking sectors, which would facilitate CAs and POs use of the guideline. Slightly more OSFI resources would be required than under Option 2. Other costs and benefits of this option would be similar to those outlined in Option 2.

VI. Consultations

OSFI consulted internally to obtain input from many areas of the organization. OSFI also conducted pre-consultations on preliminary drafts of the guideline with CA/POs from a representative sample of FFIBs, a number of external lawyers, and the industry associations. The comments submitted suggested a strong preference for separate guidelines in order to recognize the differences between the industry sectors. Separate draft guidelines for comment were posted to OSFI's website in July 2005. The final version of the guidelines include minor changes as a result of the comments received.

VII. Recommendation

OSFI believes that the most appropriate method of addressing the issues noted above would be through Option 3, i.e., replacing the current guideline with two separate guidelines for CAs of insurance and fraternal branches and POs of bank branches respectively. Although this option requires a marginal increase in resources versus option 2, OSFI believes that the more targeted nature of separate guidelines would be beneficial to both the industry and OSFI alike.