



Instruction Guide

Subject: Guide for Continuing a Body Corporate as a Bank or a Federally Regulated Trust or Loan Company

Category: Application Guides

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Introduction

The Office of the Superintendent of Financial Institutions (OSFI) is responsible for administering a number of federal statutes, including the statutes applicable to the regulation of banks (the [Bank Act](#) (BA)) and federal trust and loan companies (the [Trust and Loan Companies Act](#) (TLCA)). As part of the regulatory process, OSFI assesses applications for continuance and makes recommendations to the Minister of Finance (the Minister), who has the ultimate responsibility for approving the continuance of a body corporate as a federally regulated financial institution (a FRFI) under the BA or TLCA.

Purpose

This Guide sets out the two phases of the process to continue as a FRFI under the BA or TLCA along with the information that an applicant¹ is generally expected to submit in support of the requisite application to the Minister seeking the issuance of letters patent of continuance (Letters Patent) continuing the body corporate as a FRFI.

This Guide also sets out the various prudential, regulatory and legislative criteria and information requirements relative to the application for continuance as a FRFI.

One of the primary objectives of this Guide is to promote awareness and enhance the transparency of the assessment criteria and processes for continuance as a FRFI. In this regard, prospective applicants should note that continuance as a FRFI is generally intended for entities currently engaged in business activities.

OSFI will generally evaluate a proposed continuance against the criteria in this Guide; however, as the particular circumstances and facts of each application are different, this Guide should not

¹ For the purpose of this Guide, any reference to applicant is to the body corporate seeking to continue as a FRFI.



be viewed as an exhaustive set of criteria and information requirements.² OSFI officers from the Legislation and Approvals Division and Deposit-Taking Supervision Sector jointly review and assess each application for continuance as a FRFI.

This Guide does not apply to:

- (i) the establishment of a foreign bank branch³ in Canada;
- (ii) the incorporation of a bank or a federally regulated trust or loan company;⁴
- (iii) the incorporation of, or continuance as, a bank holding company; and
- (iv) the incorporation of, or continuance as, a federal credit union.

Prospective applicants are encouraged to contact OSFI for further information regarding the establishment, incorporation or continuance of these entities.

² The FRFI legislation provides broad authority to the Minister and the Superintendent of Financial Institutions to take into account all matters that they consider relevant in the circumstances related to the granting of any approval (e.g., section 973.01 of the BA).

³ Please refer to the OSFI [Guide to Foreign Bank Branching](#).

⁴ Please refer to the OSFI [Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies](#).

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General Overview

There are two primary approvals related to an application to continue a body corporate as a FRFI in Canada: (i) the issuance of Letters Patent by the Minister⁵; and (ii) the making of an order to commence and carry on business (Order) by the Superintendent of Financial Institutions (the Superintendent).⁶

Application Process

The application process to continue a body corporate as a FRFI in Canada is comprised of two phases related to the approvals noted above, the key elements of which are outlined below. The phased approach is intended to provide applicants with guidance and feedback both at the initial stages of the proposed application and throughout the application process.

Phase-1 (Pre-Application)

- Applicant meets with OSFI to discuss the proposed application.
- Applicant submits Phase-1 Information Requirements to OSFI for review and consideration.
- Applicant meets with OSFI for a detailed discussion of its submissions and proposed business plan.
- OSFI issues a letter to the applicant setting out its preliminary views and expectations regarding the proposed application.

Phase-2 (Letters Patent and Order)

- Applicant publishes a notice of intention to apply for Letters Patent.
- Applicant submits its formal application for Letters Patent to OSFI for review and consideration.⁷
- OSFI will generally request further information or details from the applicant and will meet with the applicant during the course of its review of the application.
- OSFI carries out its pre-commencement onsite review(s) of the applicant.
- If OSFI is satisfied that any material issues or concerns identified have been adequately addressed, OSFI submits its recommendation to the Minister regarding the issuance of Letters Patent.
- If Letters Patent are issued by the Minister, the Superintendent makes the Order.

Application Timeframes

While there is no specific time limit on the assessment of applications, OSFI endeavours to complete all application assessments as quickly as possible. The assessment of each application

⁵ Letters Patent are issued by the Minister upon recommendation of the Superintendent.

⁶ Please see section 27 of the BA and section 26 of the TLCA, and paragraph II of Administrative Guidance below.

⁷ No application is required in respect of an Order as the Superintendent is required to make the Order upon the issuance of Letters Patent (please see subsection 48(3) of the BA and subsection 52(4) of the TLCA).

will depend on the specific facts and circumstances, and OSFI will communicate regularly with the applicant throughout this process.

In OSFI's experience, delays in receiving Letters Patent often result from the complexities presented in the application, the provision of incomplete information by the applicant in support of the application, and/or a failure on the part of the applicant to sufficiently address additional information requests from OSFI in a timely manner.

Applicants should also note that the timing in the latter stages of the application process will largely depend on the readiness of the applicant to begin business as a FRFI, as verified during the pre-commencement on-site review(s).

Terminating Review of Application

OSFI may terminate its review of an application where, in OSFI's view, based on the quality of the applicant's submissions, and despite significant feedback from OSFI, the applicant is unable to satisfy the information requirements in support of the application. In this regard, applicants should note that they bear the onus of satisfying OSFI's information requirements in a timely, clear and complete manner.

Phase-1 (Pre-Application)

(i) *Initial discussion with OSFI*

Prior to submitting the formal application, a prospective applicant is requested to contact the Legislation and Approvals Division to schedule an initial in-person meeting with OSFI to discuss the proposed continuance and the application process.⁸ This discussion provides an opportunity for OSFI to provide preliminary feedback regarding any apparent or potential regulatory, prudential or public policy issues.

The initial discussion also provides an opportunity for OSFI to clarify its processes and expectations regarding applications to continue as a FRFI generally, along with any unique considerations that may be applicable to that particular prospective applicant.

To facilitate the initial discussion, a prospective applicant will generally be expected to provide the following written submissions prior to the meeting:

- (a) the reason(s) for which it intends to apply to continue as a FRFI;
- (b) a brief overview of the proposed business strategy and target market as a FRFI;
- (c) a listing of the entities in which the prospective applicant has, or proposes to have, a substantial investment⁹ and a brief description of the business activities of these entities;
- (d) a description of any transitional relief that would be requested;¹⁰
- (e) a description of the prospective applicant's ownership structure, including details regarding any proposed changes to the structure, potential impediments to the eligibility¹¹ of any of the owners to hold ownership interests in a FRFI and sources of capital for initial and on-going financial support; and
- (f) a description of the proposed management team.

For the purpose of this Guide, any reference to "owner" generally includes:

- (a) any person who beneficially owns more than 10% of any class of shares or ownership interests in the prospective applicant, or who controls¹² an entity that beneficially owns more than 10% of any class of shares or ownership interests in the prospective applicant; and
- (b) any person who controls the prospective applicant or who beneficially owns more than 10% of any class of shares or ownership interests in an entity that controls the prospective applicant.

⁸ The contact information for OSFI's Legislation and Approvals Division is located on the final page of this Guide.

⁹ Please see section 10 of the BA and TLCA.

¹⁰ Please see section 39 of the BA, section 37 of the TLCA and paragraph III of Administrative Guidance below.

¹¹ Please see paragraph I of Administrative Guidance below.

¹² Please see section 3 of the BA and TLCA.

(ii) Submission of Phase-1 Information

OSFI will request the following information from a prospective applicant who, after the initial discussion, wishes to proceed with the application. OSFI's primary purpose in reviewing this information is to identify any fundamental issues that should be considered by the prospective applicant before or at the time of its Phase-2 application, including any:

- (a) material risks that may impact the core viability of the applicant's business plan as a FRFI; and
- (b) significant prudential or policy concerns that may prevent OSFI from making a positive recommendation to the Minister for the issuance of Letters Patent.

1.0 Phase-1 Information Requirements

1.1 Applicant, Ownership and Financial Strength

The prospective applicant is generally expected to provide:

- (a) the names of the jurisdictions and dates of incorporation or establishment of the prospective applicant and its owners;
- (b) the current organization chart (with percentages owned) of the prospective applicant, showing its owners and including entities in which the prospective applicant (and any of its owners) has a substantial investment¹³ (indicate by an asterisk whether any of the entities shown on the chart operate in Canada, and provide a summary of these operations);
- (c) for each entity in which the prospective applicant has a substantial investment, a detailed description of its business activities, and:
 - (i) if the prospective applicant is of the view that the entity is a "regulated entity"¹⁴, an analysis in support of the prospective applicant's view, and
 - (ii) where the entity is not a "regulated entity", a detailed analysis setting out why each of its business activities are authorized¹⁵ and not restricted¹⁶;
- (d) details regarding any voting agreement or other similar arrangements relating to shares or ownership interests in the applicant or any entity that controls the applicant;

¹³ Please see section 10 of the BA and TLCA.

¹⁴ An entity is a "regulated entity" if it is listed in subsections 468(1) of the BA or 453(1) of the TLCA, as the case may be.

¹⁵ Business activities that are authorized are listed in subsections 468(2) of the BA or 453(2) of the TLCA, as the case may be.

¹⁶ Business activities that are restricted are generally listed in subsections 468(3) of the BA and 453(3) of the TLCA, as the case may be.

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- (e) if an owner is a government or a political subdivision, or an agent or agency thereof, a summary of its involvement in the operation and affairs of the prospective applicant;¹⁷
 - (f) a summary of the current financial services and other key activities carried on by the prospective applicant, its owners, and any of their affiliates, including a list of jurisdictions in which they operate and the nature and degree of regulatory oversight applicable to the financial services activities;
 - (g) copies of the most recent annual reports of the prospective applicant and of its owners;
 - (h) the audited consolidated financial statements of the prospective applicant and of its owners for the last three years (balance sheet, income statement, statement of changes in shareholders' equity);¹⁸ and
 - (i) details of whether the prospective applicant, its owners, or any of their affiliates have been:
 - (i) denied a request to establish a financial institution or a branch in any jurisdiction, and
 - (ii) the subject of any criminal proceedings or administrative sanctions in any jurisdiction.

1.2 Business Plan

The prospective applicant is generally expected to provide a five-year business plan, including:

- (a) the reasons why the prospective applicant is seeking to continue as a FRFI;
- (b) an analysis of target markets, opportunities and competitors, showing challenges and plans to address them;
- (c) the reasons why the prospective applicant believes that it will be successful as a FRFI, and the overall strategy for achieving this success, including a discussion of key assumptions;
- (d) the location(s) of the existing, and any proposed, branch(es)¹⁹ and head office of the prospective applicant in Canada;

¹⁷ Please see paragraph I of Administrative Guidance below.

¹⁸ If the person is a foreign entity, provide a comparison between the accounting standards used to complete the financial statements and International Financial Reporting Standards.

¹⁹ Please note that "branch" is defined in section 2 of the BA and TLCA.

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- (e) a detailed description of each line of business to be conducted by the prospective applicant as a FRFI and the products and services to be offered, including how the lines of business interrelate and how any new lines of business will be integrated with the prospective applicant's current business;
 - (f) the metrics set out in OSFI's [Liquidity Adequacy Requirements \(LAR\) Guideline](#), including the Net Cumulative Cash Flow and Liquidity Coverage Ratio, for each year of the five-year business plan, including a breakdown of all elements used to calculate those metrics;
 - (g) the risk-based capital and leverage ratios for each year of the five-year business plan, including a breakdown of all elements used to calculate those ratios;²⁰
 - (h) five-year *pro forma* financial statements (base case²¹) for the prospective applicant as a FRFI, including balance sheet, income statement, details regarding key assumptions and an identification of major asset, liability, income and expense categories;
 - (i) five-year *pro forma* financial statements showing the results of changes in key assumptions used in developing the base case business plan under a remote but plausible severe stress scenario²² and a discussion of the changes in assumptions;
 - (j) details regarding the expected costs to be incurred in preparing to commence business operations as a FRFI;
 - (k) details regarding the incremental costs associated with being regulated as a FRFI for each year in the five-year business plan;
 - (l) details regarding the current and proposed organizational structure including senior management reporting lines and key responsibilities within the organization;

²⁰ Please see OSFI's [Capital Adequacy Requirements \(CAR\) Guideline](#) and [Leverage Requirements Guideline](#). In preparing the *pro forma* financial statements, note that the initial authorized leverage ratio assigned by OSFI will depend on several factors but will typically fall within the 8 to 12 *per cent* range. Factors include the nature of the proposed business, the anticipated peer group risk profile, the overall strength of the business plan, the effectiveness of the controls in place, the recent financial performance of the applicant, the financial strength of the owners and the level of initial capitalization. Prospective applicants should discuss with OSFI the initial leverage ratio they intend to use to develop the business plan.

²¹ Where a prospective applicant intends to seek transitional relief (please see paragraph III of Administrative Guidance below), the prospective applicant is generally expected to provide a base case that factors in the requested transitional relief and a base case that does not factor in transitional relief. If this is the case, the information set out in 1.2(i) above should be provided for both base cases.

²² Prospective applicants should discuss with OSFI the stress scenario they intend to use. The financial statements are generally expected to address two cases under the stress scenario; one case where the FRFI takes no action and a second case where the FRFI acts to respond to the stress.

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- (m) the current and proposed composition of the board of directors and senior management, and details regarding these persons; and
 - (n) a description of any current and proposed material outsourcing arrangements involving the prospective applicant, how these arrangements are, or would be, managed, and copies of any material outsourcing arrangement contracts expected to remain in place post continuance.²³

1.3 Other Requirements

The prospective applicant is generally expected to provide details regarding its current and proposed, as applicable:

- (a) credit products and the underwriting criteria for those products;
- (b) trading and investment strategy;
- (c) information technology environment; and
- (d) contingency plan²⁴ in the event that it is unable to execute its business plan.

(iii) Business plan discussion with OSFI

A second in-person meeting with the prospective applicant will be scheduled once OSFI has had an opportunity to consider the information submitted under sections 1.1 to 1.3 above. The purpose of this meeting is for the prospective applicant to demonstrate an understanding of the material risks associated with its business plan and the methods by which it intends to mitigate those risks. Prior to the meeting, OSFI will provide the prospective applicant with an agenda and specific issues that the prospective applicant will be expected to address at the meeting.

(iv) OSFI Expectations Letter

Following the business plan discussion with OSFI, the prospective applicant will receive a letter setting out OSFI's views and expectations regarding:

- (a) any material risks or concerns with the proposed business plan; and
- (b) additional information requirements, in addition to those already set out in this Guide, that the prospective applicant will be required to submit as part of its formal application in Phase-2.

²³ Please see OSFI [Guideline B-10 - Outsourcing of Business Activities, Functions and Processes](#).

²⁴ The contingency plan should include options that the prospective applicant would propose to pursue in the event it is unable to execute its business plan as well as the criteria that would be considered in implementing a particular option under the plan.

OSFI will also request that the prospective applicant provide an expected date for its submission of a formal application.

Phase-2 (Letters Patent and Order)

(i) Notice of Intention to Apply

Prior to submitting the formal application, the prospective applicant must give notice of its intention to apply for Letters Patent (Notice). The primary purpose of the Notice is to inform the public of the identity of the body corporate making the application and to allow for public comment. The FRFI statutes state that the Notice must be published once a week for four consecutive weeks in the *Canada Gazette* and in a newspaper in general circulation at or near the place where the head office of the FRFI is to be situated. The FRFI statutes also specify that the Notice must be in a form satisfactory to the Superintendent. As such, a draft copy of the Notice should be provided to OSFI for review prior to publication to avoid the possibility of having to republish the Notice.²⁵ In this regard, OSFI's expectation is that the Notice will set out:

- (a) the names of the applicant and its owners²⁶;
- (b) the geographical locations/jurisdictions of the applicant and its owners;
- (c) the proposed name²⁷ of the applicant as a FRFI; and
- (d) a brief description of the proposed activities of the applicant as a FRFI.

The FRFI statutes provide that a person may formally object to the proposed continuance by submitting the objection, in writing, to the Superintendent within 30-days of the last publication of the Notice. Where an objection is submitted, the Superintendent will assess its merits and determine whether a public inquiry into the objection is warranted. The Superintendent must also inform the Minister of the objection and the findings of any such inquiry.

(ii) Submission of Formal Application

Following the publication of the Notice, the applicant may submit its formal application to OSFI for the issuance of Letters Patent. The information that OSFI generally expects to be submitted in respect of an application for Letters Patent is set out below.

OSFI will review the application and will contact the applicant to discuss its completeness, status, and outstanding issues. This will typically be done through one or more written communications, discussions and/or meetings. Where necessary, OSFI may also request additional information to complete the assessment of the application, which may include additional corroborating information or analysis from third parties. OSFI's assessment will also

²⁵ Review by OSFI of the draft Notice will ensure that the form and information contained in the Notice provides the necessary information to the public.

²⁶ OSFI will discuss with the prospective applicant the owners who should be identified for the purpose of the Notice.

²⁷ The applicant should confirm that it has performed the requisite name use analysis. Please see sections 2.9(b) and (c) of this Guide.

be informed by its experience of the actual performance of existing FRFIs in similar business lines.

2.0 Phase-2 Information Requirements

OSFI expects applications to contain all the information requirements set out in sections 2.1 to 2.9 of this Guide. Additionally, if any of the details have changed in respect of the information requirements submitted under sections 1.1 to 1.3 above, the applicant should update and re-submit that information.

In certain circumstances, it may not be feasible for an applicant to provide all the information set out below at the time of the application. Where this is the case, applicants should explain to OSFI which information items will be provided at a later date.

2.1 Applicant, Ownership and Financial Strength

The applicant is generally expected to provide, as applicable:

- (a) the addresses of the principal places of business and head offices of the applicant and its owners;
- (b) certified copies of the constating documents and current company by-laws of the applicant and its owners;
- (c) if the applicant is a provincial financial institution, or any of its controlling owners are provincial or foreign financial institutions (each hereinafter referred to as an entity):
 - (i) the name and contact information of an individual from the entity's home regulator that is familiar with the entity's activities,
 - (ii) confirmation that the entity's home regulator is aware of the applicant's intention to continue as a FRFI, details regarding whether the entity requires regulatory approval from its home regulator in respect of the proposed continuance, and if so, confirmation that any such approval has been obtained,
 - (iii) information on whether, and in what manner, the entity is subject to comprehensive consolidated supervision and regulation by its home regulator, and
 - (iv) a report of the examination in respect of the entity issued by its home regulator or, if the report cannot be provided, any views that such regulator may provide regarding the entity;
- (d) copies of the most recent reports on the applicant and its owners issued by a recognized credit rating agency, if available;

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- (e) details in support of each owner's capacity to provide continuing financial, managerial and operational support to the proposed FRFI, including:
 - (i) if the owner is, or controls, a regulated financial institution, confirmation that the institution is adequately capitalized and meets, as a minimum, international capital and liquidity standards as agreed to by the Basel Committee on Banking Supervision, as applied in its home jurisdiction,²⁸ and
 - (ii) if the owner is not a regulated financial institution, a list of its corporate group's principal competitors, the key financial metrics for the group's industry (e.g., return on equity, debt to equity) and, for each metric identified, the industry average in each of the past 5 years and the group's performance against the average;
 - (f) if any of the applicant's owners are individuals, for each owner:
 - (i) a completed [OSFI Security Information Form](#),²⁹
 - (ii) a *curriculum vitae*, and
 - (iii) information that demonstrates that the owner has, or has access to, the necessary resources to provide on-going financial support to the FRFI;
 - (g) at the time the application is filed, a written commitment from an owner to provide, prior to the applicant commencing business as a FRFI, any proposed additional capital as detailed in the business plan of the applicant;
 - (h) a certified copy of the special resolution authorizing the applicant to apply for Letters Patent; and
 - (i) for an applicant incorporated otherwise than by or under an Act of Parliament, confirmation that it is authorized by the laws of the jurisdiction where it is incorporated to apply for Letters Patent (to the extent not already addressed in (c)(ii) above).³⁰

²⁸ Please note that, in certain circumstances, OSFI may request that the owner provide information that demonstrates that the institution meets the international standards as applied in both its home jurisdiction and in Canada.

²⁹ The OSFI Security Information Form(s) must be provided to OSFI in the following two formats: (a) a signed and dated original hard-copy, and (b) an electronic version in Excel format. Once OSFI receives the completed forms, they are then forwarded to the relevant Canadian law enforcement and intelligence agencies to carry out the requisite background and security assessments. Please note that the time required by law enforcement and intelligence agencies to complete these assessments is not within OSFI's control, and the Superintendent will generally not seek the Minister's approval in respect of the Letters Patent until these assessments are completed without issue. As such, applicants are strongly encouraged to remit the completed OSFI Security Information Form(s) at the earliest possible stage in the application.

³⁰ Confirmation of authorization to apply for Letters Patent may take the form of an approval by the applicant's regulator or a Minister in the jurisdiction where the applicant is incorporated, or any other form prescribed by the jurisdiction.

2.2 Business Plan

With respect to the five-year business plan submitted in Phase-1, the applicant is generally expected to provide:

- (a) sources of initial and future capital in the form of a capital plan and funding plan;
- (b) a *pro forma* [Internal Capital Adequacy Assessment Process \(ICAAP\)](#) reporting template and information supporting the:
 - (i) identification of all key risks,
 - (ii) effectiveness of proposed information systems that support ICAAP,
 - (iii) appropriateness of the measurement methodology employed to support the ICAAP assessment,
 - (iv) reasonableness of the ICAAP output and the assumptions used,
 - (v) reasonableness and appropriateness of stress testing and analysis of assumptions,
 - (vi) integration of the ICAAP results and the proposed risk management processes, and
 - (vii) reasonableness of the proposed capital plan and the proposed internal capital targets;³¹ and
- (c) the intended financial year-end for the applicant as a FRFI.³²

2.3 Management

The applicant is generally expected to provide:

- (a) details regarding the projected staff complement and an organization chart showing reporting lines for senior positions and key responsibilities in the FRFI over the lifespan of the business plan, including proposed mandates for each senior position and any senior management committees;³³
- (b) details regarding the hiring criteria, including knowledge and experience for each senior position;
- (c) information on each proposed senior officer of the FRFI, including:
 - (i) a completed [OSFI Security Information Form](#),³⁴

³¹ The capital must meet OSFI's [Capital Adequacy Requirements \(CAR\)](#) and [Leverage Requirements](#). OSFI generally expects that the initial amount of capital will be sufficient, at all times, for the FRFI to remain above its internal target risk-based capital ratios and remain above its authorized leverage ratio for the first two years of the FRFI's operations under the base case scenario. However, this expectation may extend out to three years in certain circumstances, including where an applicant proposes to add new line(s) of business other than deposit-taking.

³² The financial year-end of a FRFI may be either October 31st or December 31st (please see section 307 of the BA and section 312 of the TLCA).

³³ Please see OSFI's [Corporate Governance Guideline](#).

³⁴ Please see footnote 29.

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- (ii) the title of the position the individual would hold within the FRFI,
 - (iii) details of whether the individual and/or any entity in which the individual is or was a senior officer, have been the subject of any criminal proceedings or administrative sanctions, and
 - (iv) the individual's current *curriculum vitae* demonstrating that the individual has the necessary qualifications and expertise to manage or direct the FRFI's proposed business; and
- (d) the name and address of the proposed external audit firm, and the specific partner of that firm, that will be responsible for auditing the FRFI, and confirmation that the proposed external auditor meets the suitability requirements set out in the FRFI statutes.³⁵

2.4 Risk Management: Policies, Procedures and Risk Management Controls

The applicant is generally expected to provide:

- (a) its risk appetite framework as a FRFI;³⁶
- (b) a detailed description of all risks to which it would be exposed as a FRFI as well as the manner in which it would monitor and manage these risks, including the following specific risks:
 - (i) market risk,
 - (ii) credit risk,
 - (iii) operational risk,
 - (iv) regulatory compliance, and
 - (v) strategic risk;
- (c) copies of its proposed:
 - (i) investment and lending policies, standards and procedures, and a self-assessment against OSFI's [Guideline B-1, Prudent Person Approach](#), [Guideline B-2, Large Exposure Limits](#), and [Guideline B-20, Residential Mortgage Underwriting Practices and Procedures](#) (if applicable),
 - (ii) funding and liquidity risk management policies, procedures and a description of the control procedures to monitor funding and liquidity,³⁷
 - (iii) provisioning policies and a description of the collective allowances that are anticipated in executing its business plan as a FRFI,
 - (iv) dividend and capital management policies,³⁸

³⁵ Please see section 315 of the BA and section 320 of the TLCA.

³⁶ Please see OSFI's [Corporate Governance Guideline](#).

³⁷ Please see OSFI [Guideline B-6 - Liquidity Principles](#).

³⁸ The capital management policy should detail the internal targeted levels of capital and describe on-going monitoring procedures to ensure that the FRFI will meet OSFI's minimum capital requirements.

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- (v) compensation policy for all human resources,³⁹
 - (vi) market risk management policies,
 - (vii) operational risk management policies,⁴⁰ and
 - (viii) business continuity management policy, business impact analysis and plans for business continuity and disaster recovery;⁴¹
- (d) the name of the proposed senior officer to be responsible for risk management oversight and a description of the resources and authority allocated to discharge this responsibility; and
- (e) details of any proposed risk management and control processes that will be integrated with those of the operations of any of the applicant's owners or other entities in the owners' groups.

2.5 Board of Directors and Committees

The applicant is generally expected to provide:

- (a) the information listed in subsection 2.3(c) of this Guide in respect of each proposed director of the FRFI;
- (b) a description of:
 - (i) the composition⁴² and mandate of the proposed board of directors (the Board) and its committees,⁴³
 - (ii) the Board's proposed policies and practices,
 - (iii) the proposed self-assessment programs of the Board, and
 - (iv) the Board's proposed responsibilities with respect to risk management and internal controls;⁴⁴
- (c) a copy of the proposed conflict of interest policy and, if applicable, details regarding the oversight that will be provided by the management committees of the applicant's owners; and

³⁹ The compensation policy is expected to be consistent with Financial Stability Board [Principles for Sound Compensation](#).

⁴⁰ OSFI generally expects operational risk management policies to include policies related to the following: outsourcing risk, business continuity and disaster recovery, privacy risk, information technology, information management and security, physical security, fraud risk and records retention. Please also see OSFI's [Supervisory Framework](#).

⁴¹ In particular, a FRFI's business continuity plan should ensure that the FRFI has in its possession or can readily access all records necessary to allow it to sustain business operations, meet its regulatory obligations, and provide all information as may be required by OSFI to meet its legislated mandate.

⁴² Relevant financial institution and risk management expertise are key competencies for the Board. There should be reasonable representation of these skills at the Board and Board committee levels.

⁴³ The FRFI statutes require that the directors of the FRFI establish audit and conduct review committees (please see subsection 157(2) of the BA and subsection 161(2) of the TLCA).

⁴⁴ Please see OSFI's [Corporate Governance Guideline](#).

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- (d) an analysis demonstrating that the applicant's proposed corporate governance policies and practices will comply with OSFI's [Corporate Governance Guideline](#).⁴⁵

2.6 Internal Audit

The applicant is generally expected to provide:

- (a) a description of the proposed mandate, organization structure, methodology and practices of its internal audit function, and a copy of the proposed Internal Audit Plan for the first year of operations as a FRFI (including audits planned for outsourced activities); and
- (b) where applicable, a description of the involvement of any internal audit group(s) of its affiliates to assess its internal controls.

2.7 Regulatory Compliance Management

The applicant is generally expected to provide a detailed description of the internal controls, policies and procedures that it would follow as a FRFI to ensure compliance with:

- (a) the FRFI statutes and OSFI issued guidance, including the name of the proposed senior officer that would be responsible for the oversight of such compliance, and a description of the resources and authority to be allocated to that person to discharge this responsibility;
- (b) sections 83.08 to 83.12 of the *Criminal Code* and the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (UNSTR) and related directives issued by OSFI and the Government of Canada, including the name of the senior officer that is, or would be, responsible for the oversight of such compliance with the *Criminal Code* and UNSTR, and a description of the resources and authority allocated to that person to discharge this responsibility;
- (c) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), and related guidelines issued by the [Financial Transactions and Reports Analysis Centre of Canada](#) and OSFI [Guideline B-8 - Deterring and Detecting Money Laundering](#), including the name of the Chief Anti-Money Laundering Officer that is, or would be, appointed under the PCMLTFA, a description of the resources and authority allocated to that person to discharge this

⁴⁵ The corporate governance practices adopted by a FRFI will likely depend on the nature, scope, complexity, and risk profile of that institution.

responsibility, and an assessment of the money laundering and terrorist financing risks relevant to the proposed business plan; and

- (d) all other pertinent Canadian legislation.⁴⁶

2.8 Information Technology

The applicant is generally expected to provide:

- (a) a risk assessment of the IT operations including copies of its proposed cyber risk management policies and practices;⁴⁷
- (b) a description of any integration with third party systems;
- (c) the proposed end user computing policy; and
- (d) the proposed IT policy and governance structure, including roles and responsibilities, and details on resources and staffing.

2.9 Other Requirements

The applicant is also generally expected to provide:

- (a) its proposed by-laws, including capital by-laws (to the extent the proposed by-laws differ from the by-laws provided under 2.1(b) above);
- (b) its proposed name⁴⁸ as a FRFI, in English, French, or both (as required), and a name search report⁴⁹ accompanied by an analysis in support of the applicant's conclusion that the proposed name:
- (i) is available for use in Canada, and
 - (ii) is not prohibited by the FRFI statutes and meets the requirements of any other relevant Canadian legislation, including all pertinent financial institution statutes;⁵⁰
- (c) where its proposed name as a FRFI is substantially the same as that of an affiliated entity:

⁴⁶ Please see OSFI [Guideline E-13 - Regulatory Compliance Management \(RCM\)](#).

⁴⁷ Please see OSFI [Cyber-Security Self-Assessment Guidance](#).

⁴⁸ The proposed name can be reserved under the FRFI statutes. Please see [Index A No. 20 – Name Reservation](#) for information requirements and administrative guidance in relation to name reservation applications.

⁴⁹ OSFI will accept a NUANS corporate name search report, which includes a list of business names and trademarks that sound similar to the name being proposed. If the FRFI would conduct business in the Province of Québec, a search of the Québec Corporations Database at “Registraire des entreprises” is also required.

⁵⁰ If the FRFI will use both an English and French form of the proposed name, a name search report and corresponding analysis must be provided in respect of both forms of that proposed name. Reference should also be made to OSFI [Advisory 2002-01-R1 - Corporate Names, Registered Names and Trade Names](#).

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- (i) the consent in writing of that entity, or from the controlling parent of the corporate group on behalf of that entity, to use the name, and
 - (ii) a description of the mitigants already in place, or mitigating measures that the FRFI would undertake, to avoid potential confusion in the marketplace;
- (d) a statutory declaration or affidavit by a representative of the newspaper and *Canada Gazette* pertaining to the dates that the applicant's Notice was published, along with a copy of the published Notice;⁵¹
- (e) an acknowledgement of the [Support Principle](#) by a controlling owner;⁵²
- (f) a confirmation that the applicant has the required amount of capital;⁵³
- (g) a signed letter of commitment by the applicant⁵⁴ to the effect that it will provide OSFI with adequate advance notice of any proposed material changes to its business plan as a FRFI;⁵⁵
- (h) if the applicant is a subsidiary of a non-WTO Member foreign bank or foreign institution⁵⁶ that is engaged in trust or loan business (Non-WTO Parent), the applicant must demonstrate that treatment as favourable for FRFIs exists or will be provided in the jurisdiction in which the Non-WTO Parent principally carries on business, either directly or through a subsidiary;⁵⁷ and
- (i) the non-refundable service charge in respect of the application, as required by the [Service Charges \(Office of the Superintendent of Financial Institutions\) Regulations](#).⁵⁸

⁵¹ Please see section 25 of the BA and section 24 of the TLCA.

⁵² The Support Principle that the controlling owner is expected to acknowledge will be provided by OSFI. Where no person will control the FRFI, this acknowledgement will not be required.

⁵³ Please see footnote 32.

⁵⁴ The letter of commitment that the applicant is expected to sign will be provided by OSFI.

⁵⁵ Material changes to the business plan may include new product offerings, changes in management structure or growth of the business beyond what was contemplated in the initial business plan submitted in support of the application for Letters Patent.

⁵⁶ Please see section 2 of the BA and TLCA for the definition of “non-WTO Member foreign bank” and “non-WTO member foreign institution” respectively.

⁵⁷ Please see section 24 of the BA and section 23 of the TLCA.

⁵⁸ A wire transfer, cheque or draft should be made payable to the “Receiver General for Canada”.

On-site Reviews and Pre-commencement Letters

One or more on-site reviews will be arranged⁵⁹ prior to OSFI making a recommendation to the Minister in respect of the issuance of Letters Patent and the anticipated areas for review and discussion will be provided by OSFI at that time. The purpose of an on-site review is to determine whether the applicant is sufficiently prepared to commence business operations as a FRFI. It will assess, among other things, the operational readiness and control processes and management systems referred to in sections 2.4, 2.7 and 2.8 of this Guide. An on-site review will also assess whether the applicant is capable of producing the required statutory and supervisory information in an accurate and timely manner at the commencement of operations as a FRFI.

OSFI will provide the applicant with a pre-commencement letter prior to a scheduled on-site review. The letter will request additional information that the applicant is expected to provide sufficiently in advance of the on-site review so that OSFI can consider the submissions prior to the on-site review.

Following an on-site review, OSFI will provide the applicant with a letter setting out any outstanding concerns and OSFI's expectations regarding their resolution.

Letters Patent and Order

Before making a recommendation to the Minister in respect of the issuance of Letters Patent, OSFI must be satisfied that the applicant has the necessary systems, management structure, control processes and regulatory compliance management systems in place. All policies and procedures should be finalised and approved prior to the making of the recommendation.

The applicant continues as a FRFI on the date provided in the Letters Patent⁶⁰. The Minister may set out in the Letters Patent any terms and conditions that the Minister considers necessary or appropriate relative to the continuance as a FRFI. The Superintendent may set out in the Order conditions or limitations on the FRFI's business to address supervisory and regulatory concerns. At the same time, the FRFI will also be assigned its authorized leverage ratio.

The FRFI will be required to publish notice of the making of the Order in a newspaper in general circulation in the city where the FRFI's head office is located. OSFI is required to publish a notice of the issuance of the Letters Patent and the making of the Order in the *Canada Gazette*.⁶¹ OSFI is also required to send a copy of the Letters Patent to the appropriate official or public body in the jurisdiction in which the applicant was authorized to apply for Letters Patent.⁶²

⁵⁹ OSFI would normally schedule an on-site review of the applicant upon receipt of confirmation that the on-site review has been authorized by the jurisdiction of its incorporation or confirmation that no authorization is required by that jurisdiction.

⁶⁰ Please see section 38 of the BA and section 36 of the TLCA for the effects of continuance on the FRFI.

⁶¹ Please see sections 37 and 56 of the BA and sections 35 and 59 of the TLCA.

⁶² Please see section 37 of the BA and section 35 of the TLCA.

Administrative Guidance

This portion of the Guide provides additional guidance to applicants in respect of the eligibility of applicants and owners, the matters for consideration relative to the issuance of Letters Patent and the making of the Order, transitional relief, the factors the Superintendent will take into account in determining OSFI's ability to supervise and regulate a FRFI, and other stakeholders to be considered by the applicant in the context of continuance.

I. Non-Eligible Applicants and Owners

Continuance as a FRFI is generally intended for entities currently engaged in business activities. Where this is not the case, the application should be for the incorporation of a FRFI.⁶³

The FRFI statutes provide that Letters Patent will not be issued if the application is made by or on behalf of:

- (a) an entity controlled by Her Majesty in right of Canada or in right of a province, or an agency of Her Majesty in either of those rights;
- (b) an agency of the government of a foreign country or any political subdivision thereof; or
- (c) an entity that is controlled by the government of a foreign country or any political subdivision thereof, other than a subsidiary of a foreign bank or foreign institution.⁶⁴

In addition, no person may control or be a major shareholder⁶⁵ of a bank if the person, or any of its affiliates:

- (a) engages in Canada in any financial leasing activity in which a bank is not permitted to engage; or
- (b) has control, or a substantial investment in any entity that engages in Canada in any financial leasing activity in which a bank is not permitted to engage.⁶⁶

II. Letters Patent and Order

OSFI will review the whole application with a view to ascertaining whether the criteria related to the Ministerial approval for the issuance of the Letters Patent have been met.⁶⁷ As the Superintendent makes the Order upon the issuance of Letters Patent,⁶⁸ OSFI must also be

⁶³ Please refer to the OSFI [Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies](#).

⁶⁴ Please see section 23 of the BA and section 22 of the TLCA.

⁶⁵ A person is a major shareholder of a bank where the person directly or indirectly owns more than 20% of the voting shares, or 30% of the non-voting shares, of the bank.

⁶⁶ Please see sections 378.1 and 378.2 of the BA.

⁶⁷ Please see section 27 of the BA and section 26 of the TLCA.

⁶⁸ Please see subsection 48(3) of the BA and subsection 52(4) of the TLCA.

satisfied that the applicant is sufficiently prepared to commence business operations as a FRFI prior to recommending that the Minister issue Letters Patent.

OSFI's review will focus on determining whether the following broad considerations have been satisfied:

- (a) the owners have sufficient resources to provide continuing financial support to the applicant as a FRFI;
- (b) the business record and experience of the applicant and its owners are appropriate;
- (c) the applicant and its owners are of good character and integrity and have good reputations;
- (d) the application does not raise any national security concerns;
- (e) any concerns raised by the application relative to Canada's international relations and international legal obligations are addressed;⁶⁹
- (f) the applicant's business plan as a FRFI is sound and feasible;
- (g) the applicant has adequately assessed the risks to which it will be exposed as a FRFI and has satisfied OSFI that it has implemented proper policies, processes and systems to monitor and mitigate those risks;
- (h) the applicant's initial capital as a FRFI will be sufficient to support the business plan and provide adequate protection to depositors and creditors;
- (i) the managers and directors of the proposed FRFI are in place and have the necessary experience and competence to fulfil their roles;
- (j) any integration of the owners' businesses and operations with those of the applicant is appropriate for the applicant as a FRFI;
- (k) any supervisability concerns presented by the ownership structure of the applicant are addressed;
- (l) any regulatory compliance management or public policy issues raised by the application are addressed; and
- (m) the issuance of the Letters Patent will be in the best interests of the financial system in Canada.

⁶⁹ Please see section 973.01 of the BA and section 527.3 of the TLCA.

Applicants should also note that additional information will be requested if the applicant is a subsidiary of a foreign bank or foreign institution⁷⁰ that is engaged in trust or loan business,⁷¹ from a non-World Trade Organization (WTO) Member country.

III. Transitional Relief

Where certain activities of a FRFI in respect of which Letters Patent were issued will not comply with the BA or TLCA, the Minister may, on the recommendation of the Superintendent, by order grant a temporary permission in respect of these activities. The permission granted may be to:

- (a) engage in a business activity that the applicant was engaging in at the time the application for Letters Patent was made for up to 30 days after the issuance of Letters Patent, or if the activity is conducted under an existing agreement, the expiry of the agreement;
- (b) continue to have issued and outstanding debt obligations for up to 10 years after the issuance of Letters Patent if the debt obligations were outstanding at the time the application for Letters Patent was made;
- (c) hold assets that were held at the time the application for Letters Patent was made for up to 2 years after the issuance of Letters Patent;
- (d) acquire and hold assets for up to 2 years after the issuance of Letters Patent if the applicant was obliged, at the time the application was made, to acquire those assets; and
- (e) maintain outside Canada for up to 2 years after the issuance of Letters Patent any records or registers required by the FRFI Acts to be maintained inside Canada.⁷²

The applicant should request such an order in its application to continue as a FRFI. The applicant is expected to provide a rationale for the requested order including details regarding the activity for which relief is requested and a plan to come into compliance.

IV. Supervision and Regulation (Supervisability)

OSFI carries out consolidated supervision of banking organizations to monitor potential contagion risks within the group and to be satisfied that there is comprehensive supervision of the material financial services of the group.

In all applications to continue as a FRFI, the Superintendent will assess OSFI's ability to supervise, examine and regulate the FRFI effectively. This assessment will entail an examination of the corporate structure. Where appropriate, the Superintendent may consider whether the structure would hinder effective implementation of corrective measures in the future.

⁷⁰ Please see the definition of "foreign bank" and "foreign institution" in subsection 2(1) of the FRFI statutes.

⁷¹ Please see section 24 of the BA, section 23 of the TLCA and section 2.9(h) of this Guide.

⁷² Please see section 39 of the BA and section 37 of the TLCA.

The Superintendent will generally consider the following factors in assessing the level of risk posed by the corporate structure and its impact on OSFI's ability to effectively supervise and regulate the FRFI:

- (a) the activities in which the FRFI proposes to engage, including any retail deposit-taking activity;
- (b) the expected systemic importance of the proposed FRFI, including the expected future size or intended role of the FRFI, relative to the Canadian financial sector;
- (c) the predominant nature of group-wide financial activities, having regard to:
 - (i) the complexity of the corporate structure of the group,
 - (ii) the strategic direction of the group or the nature of the planned financial services of the group,
 - (iii) the potential for prudential concerns (e.g., contagion, connected lending among members of the group),
 - (iv) the initial and expected future size of the FRFI relative to the group,
 - (v) the existence and extent of financial services activities carried on by the group in other jurisdictions, and
 - (vi) the branding to be used by the FRFI and the extent to which it differs from the branding used in respect of the other activities of the group;
- (d) the extent to which the FRFI will be an independent and self-sustaining operation with the authority to make decisions independent of the group, having regard to:
 - (i) the extent to which directors on the Board will be independent from the boards of the other entities in the group, and
 - (ii) the extent of the involvement, if any, of the FRFI's management in the business and affairs of the other entities in the group; and
- (e) the regulatory oversight of the group, including the existence and extent to which affiliates within the corporate group are supervised by Basel Accord signatories, or other regulatory agencies with whom OSFI has concluded a Memorandum of Understanding pertaining to regulatory co-operation and to supervision of these affiliates.

There are various ways that supervisory concerns arising out of corporate structures could be addressed. One possibility would be to restructure and consolidate (existing and/or planned) financial services activities in or under the FRFI or under a Canadian regulated holding company. Another possibility would be to address such concerns through an undertaking to OSFI that restricts certain activities of the corporate group.

V. Other Stakeholders

Applicants should note that FRFIs that intend to accept deposits of less than \$150,000 (CAD) will be required to be members of the [Canada Deposit Insurance Corporation](#) (CDIC).

Applicants are not required to make a separate application to CDIC for retail deposit insurance. OSFI will contact CDIC regarding any application for Letters Patent that includes a proposed retail deposit-taking activity. Pursuant to the *Canada Deposit Insurance Corporation Act*, upon the making of an Order, CDIC will insure the eligible deposits held by a FRFI unless the Order prohibits the FRFI from accepting deposits in Canada or the Order authorizes the sole acceptance of deposits \$150,000 (CAD) and greater.

Applicants should also note that the consumer provisions in the BA and TLCA are administered by the [Financial Consumer Agency of Canada](#) (FCAC). OSFI will inform the FCAC of any application for Letters Patent.

Applicants may require membership in the [Canadian Payments Association](#) (CPA). Banks are automatically members of the CPA. Once continued, banks must register with the CPA. Trust and loan companies that accept transferable deposits can apply for membership. CPA membership is necessary in order to obtain an institution number for processing cheques and electronic payment transactions.

OSFI will, on request, provide an applicant with an appropriate contact at CDIC, FCAC or CPA.

Trust and loan companies should also approach provincial regulators to determine licensing and filing requirements in each of the provinces and/or territories in which they wish to transact business.

Contact Details for Additional Information

All enquiries regarding continuance as a FRFI should be directed to:

Office of the Superintendent of Financial Institutions
Approvals and Precedents (Deposit-taking Institutions Approvals)
Legislation and Approvals Division
15th Floor, 255 Albert Street
Ottawa, Ontario, Canada, K1A 0H2

Telephone: (613) 990-6282

Facsimile: (613) 991-0325

Website: <http://www.osfi-bsif.gc.ca/>

Email: approvalsandprecedents@osfi-bsif.gc.ca