Ruling

Category: **Foreign Banks** **NOTICE***

Subject: **"Near" Foreign Banks – Securities dealer undertakings**

No: **2011 – 01**

Issue: The issue was whether a foreign bank that has provided undertakings in support of an approval granted under Part XII of the *Bank Act* (the "BA") to acquire and hold a substantial investment in a Canadian securities dealer (the "securities dealer undertakings") must still comply with those undertakings if the foreign bank has ceased to be subject to Part XII.

Background: Prior to October 24, 2001, Part XII of the BA applied to a broad range of foreign banks. As of that date, foreign banks that were not incorporated or regulated as a bank, were engaged in financial services but did not employ the word "bank" to describe their business, or were not a member of a material foreign banking group (hereinafter collectively referred to as "near foreign banks"), either were deemed to have been granted an order exempting them from most of the provisions of Part XII of the BA or were eligible for such an order. On March 8, 2008, the provisions for these exemption orders were replaced with a provision limiting the scope of Part XII to "real" foreign banks.

Except when subject to an exemption, near foreign banks required an approval from the Governor in Council (between 1988 and 1999) or the Minister of Finance (between 1999 and 2008) under Part XII of the BA to acquire and hold a substantial investment in a Canadian securities dealer. In consideration for the granting of that approval, these foreign banks were required to provide securities dealer undertakings. That requirement stemmed from the Hockin-Kwinter Accord and subsequent memoranda of understanding between OSFI and certain provincial securities commissions. The standard form securities dealer undertakings provided, among other things, a means for OSFI to receive ongoing information on the status of the securities dealers' registration with provincial securities commissions.

Lawyers for a near foreign bank asked OSFI to confirm their view that their client no longer had to comply with its securities dealer undertakings as a result of legislative changes.

Considerations: In 2001 and 2008, legislative changes streamlined the scope of application of Part XII of the BA by exempting near foreign banks. Since these foreign banks no longer require an approval under Part XII to own Canadian securities dealers, which approval was the basis to obtain the undertakings, there is no longer any legislative or public policy basis under the BA for these undertakings.

Conclusion: OSFI concluded that the near foreign bank in question no longer required to comply with its securities dealer undertakings because they have lapsed with the changes to

Part XII of the BA exempting near foreign banks from its scope. This conclusion also extends to all other near foreign banks and all entities associated with near foreign banks that have provided such undertakings.

* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI's consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling's publication.