Regulatory and legislative advisory

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Note:

Advisories describe how OSFI administers and interprets provisions of existing legislation, regulations or guidelines, or provide OSFI's position regarding certain policy issues. Advisories are not law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Advisory's publication, when considering the relevancy of the Advisory.

Introduction

This Advisory provides an overview of how the Office of the Superintendent of Financial Institutions (OSFI) administers and interprets the substantial investment regimes set out in the following statutes (individually, a Statute; collectively, the Statutes) as well as related regulations:

a. the *Bank Act* (the BA);
b. the *Insurance Companies Act* (the ICA);
c. the *Trust and Loan Companies Act* (the TLCA); and
d. the *Cooperative Credit Associations Act* (the CCAA).

These investment regimes apply to federally regulated financial institutions[1], bank holding companies (BHCs), insurance holding companies (IHCs) and provincial companies[2]. These investment regimes, however, do not apply with respect to the assets of segregated funds maintained by life companies and fraternal benefit societies.[3] As a

result, investments via segregated funds are outside the scope of this Advisory. Since the Statutes contain no investment regime specifically applicable to foreign insurance companies, and since the BA's investment regime applicable to foreign banks and entities associated with a foreign bank (other than FREs, as defined below) is addressed in Advisory 2006-01-R1, investments by these entities are also outside the scope of this Advisory.

This Advisory supersedes Advisories 2003-05, 2003-06, 2003-07 and 2003-08.

Except where stated otherwise, in this Advisory:

FRE stands for "federally regulated entity". FREs consist of federally regulated financial institutions, BHCs and IHCs. In addition, references in this Advisory to investments **by** (rather than **in**) FREs include investments by provincial companies.

Minority Investment Regulations stands for *Minority Investment Regulations* made under each of the Statutes.

OE stands for "other entity", which is an entity that is not an RE.

PE stands for "permitted entity". The Statutes define a PE as an entity in which an FRE is permitted to acquire a substantial investment under section 468 or 930 of the BA, section 495, 554 or 971 of the ICA, section 453 of the TLCA, or section 390 of the CCAA.[4] In OSFI's view, an entity is a PE once all applicable approval and other requirements contained in those sections are satisfied with respect to the entity.

PFFI stands for "provincially or foreign regulated financial institution".[5]

RE stands for "regulated entity". REs consist of FREs and PFFIs.

Specialized Financing Regulations stands for *Specialized Financing Regulations* made under each of the Statutes.

Overview:

The Statutes impose a prudent person standard and equity acquisition limits on FREs with respect to their investments. The Statutes also impose parameters on FREs with respect to their acquisitions of control[6] of, and acquisitions and increases of substantial investments[7] in, entities. An FRE acquires control of an entity if the FRE acquires control in law or control in fact of the entity.In essence, an FRE acquires a substantial investment in an

entity if the FRE, directly or via a subsidiary[8], acquires over:

a. 10 per cent of the voting shares of an incorporated entity; or
b. 25 per cent of the ownership interests of an incorporated or an unincorporated entity.

All of the above is discussed in Section 1 of the Advisory.

Generally, an FRE may only acquire control of, or acquire or increase a substantial investment in, entities falling within one of four categories (this is discussed in Section 2 of the Advisory). These four categories are as follows:

a. PEs (this category, which is subject to approval and other requirements in certain cases, is discussed in Section 3 of the Advisory);
b. entities whose shares or ownership interests are held via an RE that is a subsidiary of the FRE (this category is discussed in Section 4 of the Advisory);
c. entities whose shares or ownership interests are held for the limited period of time specified by the Statute that applies to the FRE (this category is discussed in Section 5 of the Advisory); and
d. entities whose shares or ownership interests are held in accordance with the *Specialized Financing Regulations* that apply to the FRE[9] (this category is discussed in Section 6 of the Advisory).

Where an FRE holds an investment under one category, it may reclassify that investment under another category, subject to meeting all applicable requirements of that other category (this is discussed in Section 7 of the Advisory). Where an FRE seeks to acquire control of, or acquire or increase a substantial investment in, an entity for which no approval is required, an FRE may be requested to notify OSFI (this is discussed in Section 8 of the Advisory).

Section 1. Fundamental Rules and Concepts

The following rules may apply, and the following concepts do apply, to investments addressed in this Advisory.

1.1 Prudent Person Rule

FREs must adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.[10]

1.2 Equity Limit Rules

The Statutes impose equity and aggregate limits with respect to FREs' investment portfolios as a whole (substantial investments and otherwise).[11]

1.3 Concepts of Substantial Investment and Control

The Statutes define both "substantial investment" [12] and "control" [13].

An FRE has a substantial investment in a **body corporate** if the aggregate of:

a. the voting rights attached to any of the voting shares of the body corporate beneficially owned by the FRE and any of its subsidiaries exceeds 10 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate; or
b. any shares (voting and non-voting) of the body corporate beneficially owned by the FRE and any of its subsidiaries represents ownership of greater than 25 per cent of the shareholders' equity of the body corporate.

An FRE has a substantial investment in an **unincorporated entity** if the aggregate of any ownership interests beneficially owned by the FRE and its subsidiaries exceeds 25 per cent of all of the ownership interests into which the entity is divided.

Under the Statutes, the term "control" includes both "control in law" (also known as *de jure* or legal control) and "control in fact" (also known as *de facto* control).[14]

Section 2. General Prohibition and Categories of Substantial Investments

Generally, an FRE cannot acquire control of, or acquire or increase a substantial investment in, any entity except an entity falling within one of the following four categories[15]:

a. a PE;
b. an entity whose shares or ownership interests are held via an RE that is a subsidiary of the FRE;

c. an entity whose shares or ownership interests are held for the limited period of time specified by the Statute that applies to the FRE; and
d. an entity whose shares or ownership interests are held in accordance with the *Specialized Financing Regulations* that apply to the FRE[16].

An examination of each of these four categories follows.

Practice Points – Categories of Substantial Investments

- Where an investment in an entity meets the requirements of one of the four categories above, it is not required to meet the requirements of another category. For example, if a trust company seeks to acquire, by way of category (d) above (i.e., specialized financing), a substantial investment in an OE whose sole business activity is providing information technology services, the trust company does not also need to meet the requirement of category (a) above (i.e., the Minister's approval).
- Where an FRE holds an investment under one category above, it may reclassify that investment under another category, subject to meeting all applicable requirements of that other category. Reclassifications are addressed in greater detail in Subsection 7.1 of the Advisory.

Section 3. Investments in PEs[17]

A PE is a type of entity that an FRE may control, or in which an FRE may hold a substantial investment, on a permanent basis.[18] Permanency is generally a benefit that the PE and "investments via RE subsidiaries" categories have over the other categories. In addition, and in contrast to all other categories, shares of, or ownership interests in, PEs in which an FRE has a substantial investment are exempt from the equity acquisition limits.[19]

PEs may be broadly classified as follows:

a. REs[20]; and
b. OEs that are

i. financial intermediaries (i.e., entities that engage in financial intermediary activities that expose the entity to material market or credit risk),[21]
ii. financial agents,
iii. investment holding entities,
iv. non-financial services entities, or
v. prescribed entities.

Furthermore, one or more of the following three requirements may apply before an entity may be classified as a PE:

a. where the entity is an OE, the requirement that each of its business activities be authorized, and not restricted, by the applicable Statute;
b. the requirement for the FRE to control the entity, except where the *Minority Investment Regulations* that apply to the FRE permit otherwise; and
c. the requirement for the FRE to obtain the Minister's or the Superintendent's approval.

Additional details regarding the categories of PEs, and related requirements, are provided in:

A.1 for banks and BHCs;

A.2 for life companies and IHCs;

A.3 for property and casualty companies and marine companies;

A.4 for fraternal benefit societies;

A.5 for trust and loan companies;

A.6 for associations.

The following is an examination of each of the three PE classification requirements referred to above.

3.1 Authorized and Restricted Business Activities – OEs

In contrast to the RE category, the OE category is entirely based on the type(s) of business activities that the entity carries on. An FRE may only acquire control of, or acquire or increase a substantial investment in, an OE, as a PE, where **all** of the OE's business activities are authorized,[22] and not restricted[23], by the applicable Statute.

3.1.1 Authorized Business Activities

Authorized business activities generally include activities that the FRE itself may undertake (including acquiring control of, or substantial investments in, entities). Authorized business activities also include providing any services to the FRE or members of the FRE's group, activities related to the marketing of financial products by certain entities, and activities of a mutual fund entity or a closed-end fund. With regard to an OE that is not actively engaged in a business activity, OSFI is of the view that such an OE:

a. established with a view to carry on a prospective business activity, or to become an RE, may be acquired and held as a PE that carries on such activity, or as a PE that is an RE, so long as:
    i. the entity's prospective business activity is clearly identified at the time the FRE acquires control of, or a substantial investment in, the entity,
    ii. the entity takes the actions necessary toward commencing that business activity or obtaining its RE status, and
    iii. the FRE complies with any applicable approval or other PE requirement discussed below that relates to the entity's prospective business activity or prospective RE status;
b. in which an FRE holds control or a substantial investment as a PE, but that has ceased to actively engage in a business activity and is taking the actions necessary for its dissolution may continue to be held as a PE that carries on such activity; and
c. with no current or clearly identified prospective business activities (a so called "shelf" entity) cannot be acquired or held as a PE.[24]

3.1.2 Restricted Business Activities

Restricted business activities are generally the same as ones the FRE itself may not undertake. These activities include[25]:

a. certain personal property leasing in Canada;
b. uninsured high ratio residential mortgage lending in Canada;

c. acting as a trustee in Canada, unless the OE acts as a trustee only with respect to a closed-end fund or a mutual fund entity, in accordance with provincial laws;
d. dealing in securities, except as may be permitted to the FRE, a mutual fund entity, a mutual fund distribution entity or a closed-end fund;
e. insurance business, where both
    i. the FRE is not governed by the ICA, and
    ii. the OE engages in the activities of a finance entity;
f. in the case of a property and casualty company, a marine company and a fraternal benefit society, either
    i. financial intermediary activities that expose the OE to material market or credit risk, or
    ii. the activities of a specialized financing entity;
g. acquiring control of, or acquiring or holding a substantial investment in, another entity unless:
    i. in the case of an OE that will be controlled by the FRE, the FRE itself would be permitted to acquire a substantial investment in the other entity, or
    ii. in the case of an OE that will not be controlled by the FRE, the FRE itself would be permitted to acquire a substantial investment in the other entity as either:
        A. a PE, without regard to any approval or control requirement[26],
        B. an "investment via an RE subsidiary" (see Section 4 below for more information),
        C. an entity whose shares or ownership interests are held for a limited period of time as a result of either a loan workout or the realization of a security interest (see Section 5 below for more information), or
        D. an entity whose shares or ownership interests are held in accordance with the *Specialized Financing Regulations*[27](see Section 6 below for more information); and
h. the business of accepting deposit liabilities.

As long as an FRE controls, or holds a substantial investment in, an OE, the OE's business activities are subject to these restrictions.

3.2 Control Requirement

An FRE must generally control in fact the following entities in order to hold them under the PE category:

a. an RE;

b. an investment holding entity[28]; or

c. a finance entity[29], factoring entity[30], financial leasing entity[31] or any other OE that engages in financial intermediary activities that expose the OE to material market or credit risk[32].

The FRE need not control in fact the entity, however, if the FRE complies with the *Minority Investment Regulations* that apply to it, which limit substantial investments in such entities (including loans to, and guarantees made with respect to, such entities) to a total of 50 per cent of regulatory capital. If the entity is a foreign entity, and the laws or customary business practices of the foreign country do not allow the FRE to control the entity, the FRE may still acquire a substantial investment in that entity where the investment exceeds the FRE's minority investment limit.[33] In such a case, however, the FRE must include the investment when calculating its minority investment limit with respect to future acquisitions.

In addition, the Statutes require FREs, in the course of, or within a reasonable time after, acquiring control of a PE (other than an FRE), to obtain from the PE an undertaking to provide the Superintendent with reasonable access to the PE's records.[34]

3.3 Approval Requirement

3.3.1 Investments in other FREs

An FRE that seeks to acquire control, or acquire or increase a significant interest[35] in any class of shares, of another FRE must generally obtain the Minister's approval to do so under the target FRE's ownership regime.[36] The acquirer's investment regime, on the other hand, does not impose any substantial investment or control related approval in such a circumstance.

3.3.2 Investments in PFFIs and Certain OEs

Where an FRE seeks to acquire control of, or acquire or increase a substantial investment in one of the following two entities, as a PE, the FRE must generally obtain the Superintendent's approval[37]:

a. a PFFI; or

b. an OE that engages in financial intermediary activities that expose the OE to material market or credit risk.[38]

In certain circumstances, the acquisition of control of, or acquisition or increase of a substantial investment in, a PFFI or an OE described in (b) above, as a PE, instead requires the approval of the Minister. This is the case, for example, where an FRE seeks to acquire control of a PFFI or such an OE (other than a factoring entity or financial leasing entity) from an unrelated FRE, and where a large FRE seeks to acquire control of a large foreign regulated financial institution.

Approvals tied to investments in PFFIs and such OEs allow OSFI to consider, among other things, whether the proposed investment will expose the FRE to undue risk, hinder OSFI's ability to supervise the FRE or hinder the effective implementation of corrective measures in the future. In addition, as it relates to acquisitions of control of PFFIs, the approval process allows OSFI to consider the regulatory framework under which a PFFI operates, with a view to, among other things, understand how and to what extent the FRE could, going forward, make investments via the PFFI (these types of investments are discussed in Section 4 below). If prudential issues are identified, the Superintendent may enter into an agreement with the home regulator concerning the activities of the PFFI.[39] In addition, where an FRE acquires control of a PFFI, the Superintendent may require the FRE to provide undertakings regarding such entity.[40]

The Minister's approval is also generally required for an FRE to acquire control of, or acquire or increase a substantial investment in, as a PE, an OE that engages in information processing or technology activities, or non-financial activities that relate to the marketing of financial products by certain entities.

3.3.3 Giving up Control While Retaining a Substantial Investment

As discussed in Subsection 3.2 above, subject to complying with the minority investment limits, an FRE may generally only acquire a substantial investment in:

a. an RE;
b. an investment holding entity; or
c. an OE that engages in financial intermediary activities that expose the OE to material marketor credit risk;

if the FRE also acquires control in fact of the entity.

Where an FRE controls in fact such an entity and seeks to give up control while keeping a substantial investment in the entity, the FRE generally requires the Superintendent's approval to do so[41].

3.3.4 Exceptions to Approval Requirement

No PE-related approval is required under the investment regime for an FRE to, among other things,

a. increase a substantial investment in an entity where the FRE already controls in law the entity[42]; or
b. acquire control of, or acquire or increase a substantial investment in, an OE that engages in financial intermediary activities that expose the OE to material market or credit risk, where those activities are limited to providing services exclusively to the FRE or members of the FRE's group[43].

Practice Points – Investments in PEs

- Where an FRE seeks to acquire control of, or acquire or increase a substantial investment in, an OE, as a PE, the FRE must first examine whether each of the OE's business activities are authorized, and not restricted, by the applicable Statute.
- Where an FRE seeks to acquire control of, or acquire or increase a substantial investment in, an RE or an OE, as a PE, the FRE must also examine whether it is (a) required to control the entity, and obtain the Minister's or the Superintendent's approval, and (b) requested to notify its OSFI Relationship Manager, as discussed in

Section 8 of the Advisory.

Section 4. Investments via RE Subsidiaries[44]

The Statutes provide that where an FRE controls, or acquires control of, an RE, the FRE may, through the RE, acquire control of, or acquire or increase a substantial investment in, any entity other than a foreign regulated financial institution (an Indirect Entity).[45]

An FRE may acquire control, or acquire or increase a substantial investment in, an Indirect Entity in either of the following ways:

a. the FRE acquires control of an RE that already holds control of, or a substantial investment in, the Indirect Entity; or
b. following the FRE's acquisition of control of the RE, the RE acquires control of, or acquires or increases a substantial investment in, the Indirect Entity by way of an acquisition of shares of, or ownership interests in, the Indirect Entity.

Similarly to a PE, an FRE may hold control of, or a substantial investment in, an Indirect Entity on a permanent basis (subject to the RE's investment regime). In contrast to the PE category, however, the FREs' investment regimes generally do not impose any approval, control or authorized business activity requirements, or business activity restrictions, with regard to Indirect Entities (the RE's investment regime, however, may do so). Where an Indirect Entity acquisition transaction is greater than 10 per cent of the FRE's assets, however, that transaction may be subject to the Superintendent's approval.[46] In addition, as discussed in Paragraph 3.3.2. above, the RE's investment activities may be constrained by undertakings concerning the RE that its FRE parent provided to the Superintendent.

Practice Points – Investments via RE Subsidiaries

- An FRE must be mindful of any undertakings that may constrain its ability to acquire Indirect Entities.
- Where an FRE seeks to acquire control of, or acquire or increase a substantial investment in, an Indirect Entity, the FRE may be requested to notify its OSFI Relationship Manager, as discussed in Section 8 of the Advisory.
- An FRE cannot acquire control of, or acquire or increase a substantial investment in, a foreign regulated financial institution under this category.

Section 5. Investments Held for a Limited Period of Time[47]

The Statutes allow an FRE to acquire control of, or acquire or increase a substantial investment in, any entity, provided that the FRE, within the applicable period of time:

a. does all things necessary to ensure it no longer controls, or no longer holds a substantial investment in, the entity;
b. obtains the necessary approval under this category to retain control of, or a substantial investment in, the entity for a longer or indeterminate period of time; or
c. reclassifies the investment from this category to another category, subject to meeting all applicable requirements of that other category. Reclassifications are addressed in greater detail in Subsection 7.1 of the Advisory.

Investments held for a limited period of time are categorized as follows:

a. temporary investments;
b. loan workouts; and
c. realization of security interests.

Details regarding these three categories, and related permitted holding periods, are provided in:

B.1 for banks and BHCs;

B.2 for life companies and IHCs;

B.3 for property and casualty companies and marine companies;

B.4 for fraternal benefit societies;

B.5 for trust and loan companies;

B.6 for associations.

Practice Points – Investments Held for a Limited Period of Time

- Where an FRE seeks to retain control of, or a substantial investment in, an entity acquired under this category for an indeterminate period of time, OSFI generally recommends that the FRE request an approval to reclassify the investment under the PE category, with a view to impose, in a more efficient manner, PE-related requirements with regard to that entity.[48]
- Where an FRE reclassifies an investment as a temporary investment, the FRE is requested to notify the Director, Precedents Unit (Regulatory Affairs Division), as discussed in Section 8 of the Advisory.

Section 6. Specialized Financing Investments[49]

The Statutes generally allow an FRE to acquire control of, or acquire or increase a substantial investment in, any entity, where the FRE does so in accordance with the *Specialized Financing Regulations* that apply to it.[50] For purposes of this Advisory, acquisitions made under this authority are referred to as "specialized investments." The power to make such specialized investments enhances FREs' ability to carry on their merchant banking or venture capital activities.

Banks, life companies, trust and loan companies and retail associations may make specialized investments directly or through a specialized financing entity[51] (an SFE). BHCs, IHCs and associations other than retail associations may do so only through an SFE.

In essence, the *Specialized Financing Regulations* impose the following constraints:

- **Non-permitted investments:** An FRE may make specialized investments in any entity other than:

1. an RE;
2. an entity that is engaged primarily in the leasing of motor vehicles in Canada for the purpose of extending credit to a customer or financing a customer's acquisition of a motor vehicle;
3. an entity that is engaged primarily in providing temporary possession of personal property, including motor vehicles, to customers in Canada for a purpose other than to finance the customer's acquisition of the property; or
4. an entity acting as an insurance broker or agent in Canada.

- **Holding period:** The length of time that an FRE or an SFE may hold control of, or a substantial investment in, an entity by way of a specialized investment is limited to thirteen consecutive years.

- **Equity limit:** The total book value of all shares or ownership interests that an FRE and any of its subsidiaries (including SFEs) may hold in an entity by way of a specialized investment shall not exceed $250 million.

- **Exposure limit to all SFEs and in-house specialized financing activities:**

  With respect to a bank, a life, trust or loan company, and a retail association, the sum of the following shall not exceed 10 per cent of the FRE's regulatory capital:

  - the aggregate book value of the shares or ownership interests held by the FRE and its subsidiaries in entities in which the FRE has itself made a specialized investment;
  - the aggregate book value of the shares or ownership interests held by the FRE and its subsidiaries in SFEs; and
  - the aggregate value of outstanding loans made by the FRE and its subsidiaries to SFEs.

  With respect to a BHC, an IHC or an association other than a retail association, the sum of the aggregate book value of the shares or ownership interests held by the FRE and its subsidiaries in SFEs, and of the aggregate value of outstanding loans made by the FRE and its subsidiaries to SFEs shall not exceed 10 per cent of the FRE's regulatory capital.

- **Exposure limit to each SFE and its downstream entities**[52]**:** The sum of the aggregate book value of the shares or ownership interests held by the FRE and its subsidiaries in an SFE and its downstream entities and of the aggregate value of outstanding loans made by the FRE and its subsidiaries to the SFE and its

downstream entities shall not exceed 25 per cent of the FRE's regulatory capital.

- **Exposure limit to in-house specialized financing activities:** The sum of the aggregate book value of all shares or ownership interests held by the FRE and its subsidiaries in entities in which the FRE has itself made a specialized investment and of the aggregate value of all outstanding loans made by the FRE and its subsidiaries to these entities shall not exceed 25 per cent of the FRE's regulatory capital.

- **Leverage limit:** An SFE that is controlled by an FRE, or in which an FRE has a substantial investment, shall not have outstanding debts to persons, other than the FRE and its subsidiaries, that exceed two times its equity.

Section 7. Changes in Categories of Substantial Investments

Despite having acquired control of, or acquired or increased a substantial investment in, an entity under a particular category, an FRE may retain control of, or its substantial investment in, that entity under another category in two circumstances.

7.1. Reclassification

Where an FRE holds an investment under one category, it may reclassify that investment under another category, subject to meeting all applicable requirements of that other category. [53] Where an FRE does so, the FRE is deemed to have acquired, effective as of the day of the reclassification, control of, or a substantial investment in, the entity under the other category.[54]For example, where a bank, as a specialized investment, controls in fact an OE whose sole business activity consists of making consumer loans, and the bank now wishes to hold that entity as a PE, the bank may do so, subject to meeting the applicable PE requirements prior to actually making the reclassification. In the current example, this means the bank must obtain the Superintendent's approval (see class 2(c) in Appendix A.1 for more information).

7.2 Change in the Business or Affairs of the Entity

Where an FRE holds control of, or a substantial investment in, a PE and the FRE becomes aware of a change in the business or affairs of the entity that causes the entity to no longer be a PE, the FRE is deemed to have acquired the

shares of, or ownership interests in, the entity as a temporary investment.[55] This is the case, for example, where a life company, which holds a substantial investment in an OE whose business activity consists of providing investment counselling services, becomes aware that the OE has begun providing information processing services in Canada to entities outside the life company's group. In such a case, assuming the life company wishes to continue to hold its substantial investment in the entity for an indeterminate period of time, the life company has the option of:

a. reclassifying the investment under the PE category, subject to obtaining the Minister's approval (see class 5(a) in Appendix A.2 for more information); or
b. seeking the Minister's approval to retain the investment for an indeterminate period of time under the temporary investment provision (see Appendix B.2 for more information).

OSFI would generally recommend that the life company (and any other FRE, as the case may be) choose option (a) above.[56]

Section 8. Notification Requests

OSFI requests to be notified in the circumstances and the manner described below.

8.1 Notification of acquisition or increase that does not require approval

OSFI's supervisory work includes identifying material risk to an FRE. Material risk may arise where an FRE acquires control of, or acquires or increases a substantial investment in, an entity, including where no related approval applies to the FRE. As a result, each FRE is requested to notify promptly its OSFI Relationship Manager where both of these elements are present:

1. the FRE seeks to acquire control of, or acquire or increase a substantial investment in, an entity for which no approval is required under the applicable Statute; and
2. the acquisition or increase will be material[57] to, or will present a significant change in the business strategy of, the FRE.

8.2 Notification of reclassification as a temporary investment

An FRE that reclassifies a controlling or substantial investment as a temporary investment is requested to notify promptly the Director, Precedents Unit (Regulatory Affairs Division) of this reclassification at the following coordinates, and to provide the Director with an outline of the FRE's future plans for such investment.

Office of the Superintendent of Financial Institutions

15th Floor, 255 Albert Street

Ottawa, Ontario K1A 0H2

Facsimile: (613) 991-0325

Email: approvals-approbations@osfi-bsif.gc.ca

Footnotes

1 In this Advisory, the term "federally regulated financial institutions" does not include authorized foreign banks or foreign companies authorized to insure in Canada risks.

2 The term "provincial company" is defined in subsection 2(1) of the ICA. Pursuant to subsection 656(1) of the ICA, the ICA's investment regime applies to provincial companies.

3 See paragraphs 490(3)(a) and 550(c) of the ICA.

4 See subsections 464(1) and 925(1) of the BA; subsections 490(1), 540(1) and 966(1) of the ICA; subsection 449(1) of the TLCA; and subsection 386(1) of the CCAA.

5 These are entities referred to in paragraphs 468(1)(g) to (j) and 930(1)(g) to (j) of the BA; paragraphs 495(1)(g) to (j), 554(1)(b) and (c), and 971(1)(g) to (j) of the ICA; 453(1)(g) to (j) of the TLCA; and 390(1)(e) to (h) of the CCAA.

6 The term "control" is defined in section 3 of the Statutes.

7 The term "substantial investment" is defined in section 10 of the BA, ICA and TLCA, and section 12 of the CCAA.

8 Within the meaning of section 5 of the Statutes.

9 Property and casualty companies, marine companies and fraternal benefit societies may not acquire or hold any shares or ownership interests under the ICA's *Specialized Financing Regulations*.

10 See sections 465 and 927 of the BA; sections 492, 551 and 968 of the ICA; section 450 of the TLCA; and section 387 of the CCAA. See also *Guideline B-1 – Prudent Person Approach*.

11 See sections 475, 477, 478, 937, 939 and 940 of the BA; sections 502, 507, 508, 561, 565, 566, 978, 982 and 983
of the ICA; sections 460, 465 and 466 of the TLCA; and sections 397 and 402 of the CCAA. See also the *Investment Limits Regulations* made under each of the Statutes.

12 See section 10 of the BA, ICA and TLCA, and section 12 of the CCAA, which address the concepts of "having" and "increasing" a substantial investment.

13 See section 3 of the Statutes.

14 For more information on the concept of control in fact, see *Advisory 2007-02 – Control in fact*.

15 See sections 466 and 928 of the BA; sections 493, 552 and 969 of the ICA; section 451 of the TLCA; and section 388 of the CCAA.

16 Banks, life companies, trust and loan companies and retail associations may acquire and hold shares or ownership interests under the *Specialized Financing Regulations*, either directly or through a specialized financing entity. BHCs, IHCs and associations other than retail associations may also acquire and hold such interests, but only through a specialized financing entity. Property and casualty companies, marine companies and fraternal benefit societies may not acquire or hold any shares or ownership interests under the ICA's *Specialized Financing Regulations*.

17 See subsections 466(1) and 928(1) of the BA; subsections 493(1), 552(1) and 969(1) of the ICA; subsection 451(2) of the TLCA; and subsection 388(1) of the CCAA.

18 With the exception of a specialized financing entity that holds a specialized investment. See Section 6 of the Advisory for more information.

19 See sections 477, 478, 939 and 940 of the BA; sections 507, 508, 565, 982 and 983 of the ICA; sections 465 and 466 of the TLCA; and section 402 of the CCAA.

20 Insurers are the only types of REs that fraternal benefit societies may acquire as PEs.

21 This PE category, however, is not available to fraternal benefit societies, property and casualty companies or marine companies.

22 Business activities that are authorized are listed in subsections 468(2) and 930(2) of the BA; subsections 495(2), 495(4), 554(2) and 971(2) of the ICA; subsection 453(2) of the TLCA; and subsection 390(2) of the CCAA.

23 Business activities that are restricted are listed in subsections 468(3) and 930(3) of the BA; subsections 495(3), 495(5), 554(3) and 971(3) of the ICA; subsection 453(3) of the TLCA; and subsection 390(3) of the CCAA.

24 The shares of, or ownership interests in, such an OE could, however, be acquired and held as a temporary investment until such time as its prospective business activity is clearly identified. Temporary investments are discussed in Section 5 of the Advisory.

25 References to FRE in (c) to (e) below are to the FRE that holds control of, or a substantial investment in, the OE.

26 See the *Exemption from Restrictions on Investments Regulations* made under each of the Statutes.

27 Except in the case of fraternal benefit societies, property and casualty companies and marine companies.

28 An OE whose business includes acquiring or holding of shares of, or ownership interests in, entities in which an
FRE is permitted to hold or acquire.

29 The term "finance entity" is defined in the *Finance Entity Regulations* made under each of the Statutes.

30 The term "factoring entity" is defined in the *Factoring Entity Regulations* made under each of the Statutes.

31 The term "financial leasing entity" is defined in subsections 464(1) and 925(1) of the BA; subsections 490(1) and 966(1) of the ICA; subsection 449(1) of the TLCA; and subsection 386(1) of the CCAA.

32 Fraternal benefit societies, property and casualty companies and marine companies may not acquire control of, or a substantial investment in, such OEs as PEs.

33 See subsections 468(8) and 930(8) of the BA; subsections 495(10), 554(6) and 971(8) of the ICA; subsection 453(8) of the TLCA; and subsection 390(8) of the CCAA.

34 See subsections 470(4) and 932(4) of the BA; subsections 497(4), 556(4) and 973(4) of the ICA; subsection 455(4) of the TLCA; and subsection 392(4) of the CCAA.

35 The term "significant interest" is defined in section 8 of the BA, ICA and TLCA, and section 9 of the CCAA.

36 See subsections 373(1), 377.1(1), 875(1) and 883(1) of the BA; subsections 407(1), 407.1(1), 927(1) and 932(1) of the ICA; subsections 375(1) and 375.1(1) of the TLCA; and subsections 354(1) and 354.1(1) of the CCAA.

37 Note that fraternal benefit societies must, in all cases, seek the Minister's approval to acquire control of, or acquire or increase a substantial investment in, any entity as a PE.

38 Fraternal benefit societies, property and casualty companies and marine companies may not acquire control of, or a substantial investment in, such OEs as PEs.

39 See subsections 470(3) and 932(3) of the BA; subsections 497(3), 556(3) and 973(3) of the ICA; subsection 455(3) of the TLCA; and subsection 392(3) of the CCAA.

40 See subsections 470(2) and 932(2) of the BA; subsections 497(2), 556(2) and 973(2) of the ICA; subsection 455(2) of the TLCA; and subsection 392(2) of the CCAA.

41 See subsections 468(11) and 930(11) of the BA; subsections 495(12), 554(7) and 971(10) of the ICA; subsection 453(10) of the TLCA; and subsection 390(10) of the CCAA.

42 See subsections 468(12) and 930(12) of the BA; subsections 495(13), 554(8) and 971(11) of the ICA; subsection 453(11) of the TLCA; and subsection 390(11) of the CCAA.

43 See the *Exemption from Approval for Certain Investments in Intragroup Service Entities Regulations* made under each of the Statutes.

44 See subsections 466(2), (5.1) and (5.2), and 928(2), (4.1) and (4.2) of the BA; subsections 493(2), (5.1) and (5.2), 552(2), (4.1) and (4.2), and 969(2), (4.1) and (4.2) of the ICA; subsections 451(2), (5.1) and (5.2) of the TLCA; and subsections 388(2), (5.1) and (5.2) of the CCAA.

45 An FRE, however, may continue to hold a foreign regulated financial institution as an Indirect Entity if the FRE made the indirect acquisition prior to December 12, 2013. See subsections 466(5.2) and 928(4.2) of the BA; subsections 493(5.2), 552(4.2), and 969(4.2) of the ICA; subsection 451(5.2) of the TLCA; and subsection 388(5.2) of the CCAA.

46 See sections 482 and 944 of the BA; sections 512, 569 and 987 of the ICA; section 470 of the TLCA; and section 406 of the CCAA.

47 See subsections 466(3) and 928(3) of the BA; subsections 493(3), 552(3) and 969(3) of the ICA; subsection 451(3) of the TLCA; and subsection 388(3) of the CCAA.

48 As discussed in Appendices B.1 to B.6, the provisions applicable to investments held for a limited period of time allow an FRE, subject to an approval under those provisions, to hold shares of, or ownership interests in, an entity for an indeterminate period of time, where the entity is not a PE only because the FRE did not obtain an approval under the PE provisions.

49 See subsections 466(4) and 928(2) of the BA; subsections 493(4) and 969(2) of the ICA; subsection 451(4) of the TLCA; and subsections 388(2) and (4) of the CCAA.

50 Property and casualty companies and fraternal benefit societies may not acquire or hold any ownership interests under the ICA's *Specialized Financing Regulations*.

51 An SFE is a type of PE. For more information, see class 4(a) in Appendix A.1 (banks and BHCs), Appendix A.2 (life companies and IHCs), Appendix A.5 (trust and loan companies) and Appendix A.6 (associations).

52 The term "downstream entities" refers to all entities controlled by the SFE as well as all entities in which the SFE has a substantial investment.

53 See subsections 466(6) and 928(5) of the BA; subsections 493(6), 552(5) and 969(5) of the ICA; subsection 451(5) of the TLCA; and subsection 388(5) of the CCAA.

54 See subsections 466(7) and 928(6) of the BA; subsections 493(7), 552(6) and 969(6) of the ICA; subsection 451(6) of the TLCA; and subsection 388(6) of the CCAA.

55 See sections 481 and 943 of the BA; sections 511, 568 and 986 of the ICA; section 469 of the TLCA; and section 405 of the CCAA.

56 This is with a view to impose, in a more efficient manner, PE-related requirements with regard to that entity.

In the case of a domestic systemically important bank and any of the three largest life insurance companies, OSFI generally views:

57 1. an acquisition of control of an entity as being material to the FRE where the entity's consolidated assets exceed 1% of the FRE's consolidated assets, as shown on its last annual statement; and
2. an acquisition, or increase, of a substantial investment in an entity (without control) as being material to the FRE where the consideration paid to acquire the shares or ownership interests is equivalent to at least 0.5% of the FRE's consolidated assets as shown on its last annual statement.

In the case of any other FRE, OSFI generally views:

1. an acquisition of control of an entity as being material to the FRE where the entity's consolidated assets exceed 2% of the FRE's consolidated assets, as shown on its last annual statement; and
2. an acquisition, or increase, of a substantial investment in an entity (without control) as being material to the FRE where the consideration paid to acquire the shares or ownership interests is equivalent to at least 1% of the FRE’s consolidated assets, as shown on its last annual statement.