Regulatory and legislative advisory

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Appendix A.1 – Banks and BHCs

Permitted Entities

This document has been prepared for convenience of reference only and has no official sanction. For all purposes of interpreting and applying the law, users should consult the BA and relevant regulations.

Notes:

1. In this Appendix,
    - **EAIRs** stands for *Exemption from Approval for Certain Investments in Intragroup Service Entities Regulations*;
    - **ERIRs** stands for *Exemption from Restrictions on Investments Regulations*; and
    - **MIRs** stands for *Minority Investment Regulations.*
2. Other abbreviations in this Appendix have the meaning ascribed to them on pages 1 and 2 of the Advisory.
3. Unless otherwise stated, references in this Appendix to (a) regulations are to regulations made under the BA and (b) provisions are to provisions of the BA.
4. Classes of entities 2 to 6 below comprise OEs only (i.e., 468(2) and 930(2) entities only).
5. A single OE can fall within more than one OE class listed below, depending on its business activities.
6. The control and approval requirements and business restrictions listed below refer to the ones imposed by the BA's investment regime.

Classes of Entities		Control Requirement?	Approval Requirement?	Business Restrictions?
1. REs This class comprises entities listed in 468(1) and 930(1).	a. Bank [468(1)(a) and 930(1)(a)]	Control in law and control in fact, except if in compliance with MIRs. [468(4)(a) and 930(4)(a)]	No, except that Minister's approval is required under ownership provisions of the BA.	No.
	b. BHC [468(1)(b) and 930(1)(b)]	Same as 1(a) above.	Same as 1(a) above.	No.
	c. Other federally regulated financial institution or IHC [468(1)(c), (d), (e), (f) and 930(1)(c), (d), (e), (f)]	Control in fact, except if in compliance with MIRs. [468(4)(b) and 930(4)(b)]	No, except that Minister's approval is required under ownership provisions of the applicable Statute.	No.
	d. Provincially regulated financial institution [468(1)(g), (h), (i) and 930(1)(g), (h), (i)]	Same as 1(c) above.	Superintendent's approval in all cases except where Minister's approval is required. [468(6) and (7)(c); 930(6) and (7)(c)] Minister's approval is required where the bank or BHC acquires control of the entity from a person who is not a member of the bank's or BHC's group, as defined in subsections 464(2) and 925(2) of the BA and sections 1 and 2 of the *Entity Member of Group Regulations.* [468(5)(a) and 930(5)(a)]	No.

e. Foreign regulated financial institution[1] [468(1)(j) and 930(1)(j)]	Control in fact, except • if in compliance with MIRs; [468(4)(b) and 930(4)(b)] or • where the foreign law does not permit control (bank or BHC, however, must add investment in calculating minority investment cap under MIRs).[468(8) and 930(8)]	Superintendent's approval in all cases except where Minister's approval is required. [468(6) and (7)(c); 930(6) and 7(c)] Minister's approval is required where the bank or BHC: • acquires control of the entity from **an FRE** that is not a member of the bank's or BHC's group, as defined in subsections 464(2) and 925(2) of the BA and sections 1 and 2 of the *Entity Member of Group Regulations*; [468(5)(b) and 930(5)(b)] or • has equity of at least two billion dollars and acquires control of an entity with consolidated assets that exceed 10% of the bank's or BHC's consolidated assets, as shown in its last annual statement, either alone or when combined with all other acquisitions by the bank or BHC of control of foreign regulated financial	No.

2. Other financial intermediaries This class comprises OEs that engage in a financial intermediary activity that exposes the OE to material market or credit risk.	a. Factoring entity (defined in the *Factoring Entity Regulations*) [468(2)(a) and 930(2)(a)]	Control in fact, except • if in compliance with MIRs; [468(4)(c) and 930(4)(c)] or • in the case of a foreign entity, where the foreign law does not permit control (bank or BHC, however, must add investment in calculating minority investment cap under MIRs). [468(8) and 930(8)]	Superintendent's approval, except where: • the bank or BHC is acquiring a controlling interest; [468(6) and (7)(b); 930(6) and (7)(b)] or • the entity provides services exclusively to the bank, BHC or members of the bank's or BHC's group, as defined in subsections 464(2) and 925(2) of the BA and sections 1 and 2 of the *Entity Member of Group Regulations*. [sections 1 and 3 of the EAIRs]	By definition, a factoring entity's activities are limited to acting as a factor in respect of accounts receivable, including the related raising and lending of money. [section 1 of the *Factoring Entity Regulations*] When raising money, however, the entity cannot engage in deposit-taking. [468(3) and 930(3)]

b. Financial leasing entity (defined in 464(1)) [468(2)(a) and 930(2)(a)]	Same as 2(a) above.	Same as 2(a) above.	By definition, a financial leasing entity's activities are limited to the financial leasing of certain personal property and the activities set out in section 3 of the *Financial Leasing Entity Regulations*, which include raising money. [464(1)] When raising money, however, the entity cannot engage in deposit-taking. [468(3) and 930(3)]

c. Finance entity (defined in the *Finance Entity Regulations*) [468(2)(a) and 930(2)(a)]	Same as 2(a) above.	No approval where entity provides services exclusively to the bank, BHC or members of the bank's or BHC's group, as defined in subsections 464(2) and 925(2) of the BA and sections 1 and 2 of the *Entity Member of Group Regulations*. [sections 1 and 3 of the EAIRs] In all other cases, • Superintendent's approval is required except where Minister's approval is required. [468(6) and (7)(c); 930(6) and (7)(c)] • Minister's approval is required where the bank or BHC acquires control of the entity from an FRE that is not a member of the bank's or BHC's group. [468(5)(b) and 930(5)(b)]	A finance entity is subject to the same restrictions as banks in the areas of fiduciary, leasing, residential mortgage lending, securities dealing, insurance business and substantial investments activities. [468(3) and 930(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the bank or BHC does not control the entity] In addition, the entity cannot engage in deposit-taking. [468(3) and 930(3)]

d. Mutual fund entity and closed-end fund (both defined in 464(1)) [468(2)(e) and 930(2)(e)]	No.	No.	By definition, both of these entities' activities are limited to investing their funds so as to provide investment diversification and professional investment management to the holders of their securities. In addition, these entities are subject to the same restrictions as banks in the area of substantial investments activities. [468(3)(d) and 930(3)(d). See also section 1 of the ERIRs where the bank or BHC does not control the entity]

e. Other financial intermediaries, including • an investmen fund that is not a mutual fund entity or a closed-end fund; • an entity that engages in the business activities of a factoring entity **and** in one or more other business activities; and • an entity that engages in the business activities of a financial leasing entity **and** in one or	Same as 2(a) above.	Same as 2(c) above.	Same as 2(c) above, except that no restriction on insurance business activities.

3. Financial Agents	Includes OEs that engage in the following activities: • acting as a financial agent (including insurance broker); • providing investment counselling services; • providing portfolio management services; • networking financial services; or • acting as a trustee for a mutual fund entity or a closed-end fund. [468(2)(a) and 930(2)(a)] Also includes a mutual fund distribution entity, as defined in 464(1). [468(2)(e) and 930(2)(e)]	No.	No.	A financial agent is subject to the same restrictions as banks in the areas of leasing, residential mortgage lending and substantial investments activities. [468(3) and 930(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the bank or BHC does not control the entity] In addition, a financial agent cannot engage in deposit-taking. [468(3) and 930(3)] A financial agent is also subject to the same restrictions as banks in the areas of : • fiduciary activities, except when acting as a trustee for a mutual fund entity or a closed-end fund; [468(3)(a) and (3.1); and 930(3)(a) and (3.1)] • securities dealing, except in the case of a mutual fund distribution entity. [468(3)(b) and 930(3)(b)]

4. Investment holding entities
 	
This class comprises OEs whose business includes acquiring or holding shares of, or ownership interests in, entities that a bank or BHC is permitted to hold or acquire. [468(2)(b) and 930(2)(b)]
	a. Specialized financing entity (defined in the *Specialized Financing Regulations* as an entity that acquires or holds shares of, or ownership interests in, entities that a bank may acquire control of, or hold, acquire or increase a substantial investment in, under 466(4))	Control in fact, except:
		
		• if in compliance with MIRs; [468(4)(d) and 930(4)(d)] or
		• in the case of a foreign specialized financing entity, where the foreign law does not permit control (bank or BHC, however, must add investment in calculating minority investment cap under MIRs). [468(8) and 930(8)]
			Superintendent's approval in all cases. [468(6) and 930(6)]	A specialized financing entity is subject to the restrictions set out the *Specialized Financing Regulations*, including on controlling or holding shares of, or ownership interests in,
				
				• an RE; or
				• an OE that, in Canada,
				  ◦ primarily engages in financial leasing of motor vehicles,
				  ◦ primarily engages in operational leasing, or
				  ◦ acts as an insurance agent or broker.
				
				In addition, a specialized financing entity is subject to the same restrictions as banks in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [468(3) and 930(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the bank or BHC does not control the specialized financing entity]

b. Other investment holding entity i.e., an OE that acquires or holds shares of, or ownership interests in, entities that a bank or BHC is permitted to acquire or hold under: • 409 and 922 – less than substantial investments (portfolio investments); • 468 and 930 – PEs; • 466(2) and 928(2) –investments via an RE subsidiary; • 471 and 933 – temporary investments (only if the bank or BHC controls the investment holding entity); • 472 and 934 –	Control in fact, except: • if in compliance with MIRs; [468(4)(d)(i) and (ii); and 930(4)(d)(i) and (ii)] • in the case of a foreign investment holding entity, where the foreign law does not permit control (bank or BHC, however, must add investment in calculating minority investment cap under MIRs); [468(8) and 930(8)] or • where the investment holding entity does not control or hold any share of, or ownership interest in, ◦ an RE (class 1 entity)	Superintendent's approval only if the bank or BHC is acquiring a non-controlling interest. [468(6) and (7)(a); and 930(6) and (7)(a)]	Such an investment holding entity is subject to the same restrictions as banks in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities (with the exception of temporary investment activities where the bank or BHC does not control the investment holding entity). [468(3) and 930(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the bank or BHC does not control the investment holding entity] In addition, such an entity cannot engage in deposit-taking. [468(3) and 930(3)]

5. Non-financial services entities	a. Entity that engages in information processing activities (i.e., activities referred to in 410(1)(c)) [468(2)(a) and 930(2)(a)]	No.	Minister's approval, except where the activities are: • carried on outside Canada; or • exempted by the *Information Processing Activities Regulations.* [468(5)(d) and 930(5)(d)]	A non-financial services entity is subject to the same restrictions as banks in the areas of fiduciary, leasing, residential mortgage lending, securities dealing and substantial investments activities. [468(3) and 930(3). With respect to substantial investment activities, see also section 1 of the ERIRs where the bank or BHC does not control the entity] In addition, such an entity cannot engage in deposit-taking. [468(3) and 930(3)]
	b. Entity that engages in information technology activities (i.e., activities referred to in 410(1)(c.1)) [468(2)(a) and 930(2)(a)]	No.	Minister's approval, except where the conditions set out in section 5 of the *Information Technology Activities (Banks) Regulations* or section 4 of the *Information Technology Activities (BHC) Regulations* are met (see class 6 below). [468(5)(d.1) and 930(5)(d.1)]	

c. Entity that engages in the following activities (i.e., other activities referred to in 410(1)) : • managing, holding or dealing with real property; • specialized business managem or advisory services, including acting as a general partner of a limited partnershi [2] • promoting merchand or services to card holders; • selling lottery or urban transit tickets; • acting as custodian of property;	No.	No.

d. Entity that provides services to certain entities, so long as it provides those services to the bank, BHC or members of the bank's or BHC's group, as defined in subsections 464(2) and 925(2) of the BA and sections 1 and 2 of the *Entity Member of Group Regulations*.3 [468(2)(c) and 930(2)(c)]	No.	No.	See above.
e. Entity that engages in activities relating to promotion, sale delivery or distribution of financial services or products provided by certain entities. [468(2)(d) and 930(2)(d)]	No.	Minister's approval. [468(5)(c) and 930(5)(c)]	

f. Real property brokerage entity, as defined in 464(1). [468(2)(e) and 930(2)(e)]	No.	No.		
6. Prescribed entities A bank or BHC may acquire control of, or acquire or increase a substantial investment in, an entity that engages in prescribed activities. [468(2)(f) and 930(2)(f)]	The only prescribed activities are set out in subsection 3(1) of the *Information Technology Activities (Banks) Regulations* and subsection 2(1) of the *Information Technology Activities (BHC) Regulations* (collectively, the "IT Activities").	Neither the BA nor the *Information Technology Activities Regulations* impose control requirements with respect to the IT Activities.	Where an entity limits its activities to IT Activities, no approval of the Minister is required under 468(5)(e) or 930(5)(e).4 [section 5 of the *Information Technology Activities (Banks) Regulations* and section 4 of the *Information Technology Activities (BHC) Regulations*]	In the case of an entity that engages in the IT Activities, the entity: • is subject to the same restrictions as banks in the areas of fiduciary, leasing, residential mortgage lending, dealing in goods, securities dealing and substantial investments activities; and • cannot engage in deposit-taking. [subsection 3(3) and section 4 of the *Information Technology Activities (Banks) Regulations*; subsection 2(3) and section 3 of the *Information Technology Activities (BHC) Regulations*]

Footnotes

1 OSFI is of the view that this class refers to foreign entities that are subject to regulatory regimes that are substantially similar to the ones applicable to equivalent Canadian entities listed in classes 1(a) to (d) above. For example, in order to be a class 1(e) entity, a foreign entity that primarily engages outside Canada in a business that, if carried on in Canada, would be the business of providing fiduciary services would have to be regulated in a substantially similar manner as a trust company referred to in paragraph 468(1)(c) or (g).

2 Depending on the circumstances, an entity's role as general partner of a limited partnership may also cause the entity to be a financial agent (class 3 above). In addition, OSFI generally views a general partner's nominal interest in a limited partnership as being ancillary to its general partner activities and, as a result, generally does not view a general partner as also being an investment holding entity (class 4 above) with regards to the limited partnership.

3 OSFI is of the view that if an OE engages in services referred to in paragraph 468(2)(c) or 930(2)(c) and in another paragraph within 468(2) or 930(2), then the OE should be categorized under that other paragraph. For example, where a bank seeks to acquire control of an OE that will provide information technology services exclusively to members of the bank's group, that entity should be categorized as a 468(2)(a) entity rather than a 468(2)(c) entity. In such a case, the acquisition would require the Minister's approval under 468(5)(d.1), assuming the entity's services are not contemplated by the *Information Technology Activities (Banks) Regulations*.

4 This is effectively an exception to the general approval requirement referred to in class 5(b) above.