

NEW PUBLIC DISCLOSURE REQUIREMENTS FOR CANADIAN LIFE INSURERS

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In Canada, the Office of the Superintendent of Financial Institutions (“**OSFI**”), is the federal regulatory authority over life insurers. On March 29, 2018, OSFI published its final version of a new guideline entitled [Life Insurance Capital Adequacy Test Public Disclosure Requirements](#) (the “**Disclosure Guideline**”). The final version follows OSFI’s usual public consultation period during which insurers and other stakeholders were given the opportunity to provide comments and suggestions.

New LICAT Guideline

The disclosure requirements in the Disclosure Guideline go hand in hand with OSFI’s new [Life Insurance Capital Adequacy Test](#) (LICAT) guideline for 2018 (the “**LICAT Guideline**”) which came into effect on January 1, 2018. The LICAT Guideline resulted from a recent overhaul of the prior Minimum Continuing Capital and Surplus Requirement (MCCSR) guideline for life insurers. The LICAT Guideline contains two different tests: simply put, a capital adequacy test (LICAT) for Canadian-incorporated life insurers and an adequacy of margin and assets test (LIMAT) that applies to foreign life insurance branches operating in Canada. The LICAT/LIMAT requirements establish standards used by OSFI to assess whether Canadian-regulated life insurers maintain adequate capital or an adequate margin to support risks specific to the life insurance business. In other words, these requirements essentially comprise OSFI’s solvency tests for life insurers.

Disclosure Guideline

OSFI had previously announced that once the new LICAT/LIMAT requirements came into effect, it intended to promote enhancements to the regulatory framework for life insurers through information disclosures to support the revised regulatory capital/assets requirements. The new disclosure requirements contained in the Disclosure Guideline are the result of this stated intention.

The Disclosure Guideline provides that the first LICAT public disclosure reporting period will be the year ended December 31, 2018, and that for the first year OSFI expects life insurers to apply the disclosure requirements prospectively with comparative period disclosures in subsequent reporting periods. The disclosure is to be made on an annual basis, coinciding with the timing of the insurer’s annual report. Insurers are to make the

disclosures publically available on their websites, maintaining archives of previous disclosures.

The Disclosure Guideline states that the information disclosed should undergo the same scrutiny as the internal review and control process that applies to the insurer's financial reporting. According to OSFI, the internal audit function (or similar review function for the insurer) should confirm the company's compliance with the Disclosure Guideline, both initially and subsequently on a periodic basis.

Guiding Principles

The Disclosure Guideline outlines five guiding principles designed to result in transparent, high-quality disclosures that will enable those reviewing the information to better "understand" and "compare" the disclosing life insurer's business and risks. According to OSFI, quantitative and qualitative information will "provide stakeholders with a broader picture of the life insurer's capital and risk position and promote market discipline". In brief, the guiding principles require that disclosures must be (1) clear and accessible, (2) meaningful to users, (3) consistent over time, (4) comparable across life insurers (to enable meaningful comparisons), and (5) accompanied by the qualitative narrative (see below).

Quantitative and Qualitative Information

The Disclosure Guideline indicates that OSFI expects LICAT/LIMAT public disclosures to be "tailored to the nature, size and complexity of the insurer". However, public disclosures are required to include, at a minimum, quantitative data points outlined in two attached templates – one for Canadian incorporated life insurers (i.e. the LICAT public disclosure requirements) and one for Canadian branches of foreign life insurers (i.e. the LIMAT public disclosure requirements). The templates are essentially a summary of the applicable capital/asset test that applies to the insurer along with a statement of the applicable minimum ratios required to be maintained (based on OSFI's requirements) to enable the reader to gauge the insurer's relative solvency strength. Although the technical information required as depicted in the templates appears to be summary in nature, it is based on the sophisticated calculations required by the LICAT Guideline.

In addition to the minimum quantitative (technical) information that is required to be set out, the Disclosure Guideline also states that OSFI requires a minimum qualitative narrative that explains the reasons for any material LICAT/LIMAT movements from reporting period to reporting period and any other issues that management considers to be of interest to stakeholders. Otherwise, the qualitative form of disclosure is "at the insurer's discretion". Overall, according to the Disclosure Guideline, quantitative and qualitative disclosures should be designed to provide stakeholders with a better understanding of an insurer's capital and risk position, and promote market discipline.

Comments From Respondents

One comment made to OSFI during the consultation process that was published in OSFI's [announcement](#) of the Disclosure Guideline suggested that the disclosure requirements are onerous and unwarranted because they are similar to those under Sarbanes-Oxley (SOX) in the United States. OSFI's response was to underscore that the LICAT public disclosure requirements should be similar to those that apply to financial reporting, and that this is consistent with the disclosure requirements for deposit taking institutions. In addition, in its related [Impact Analysis Statement](#) OSFI stated that requiring consistent disclosure of LICAT solvency risk would assist to aid the public's understanding of insurers' solvency strength. Therefore, in addition to resulting in overall transparency, there appears to be an expectation that the general public will be educated in how to evaluate the soundness of life insurance companies through access to the required disclosure.

Another comment made during the consultation process suggested that the disclosure would most likely be lost on the average policyholder due to its complexity, and some simplification was suggested. OSFI's reply was that the information is intended to inform stakeholders of the insurer's business, governance, risk measurement and risk management in order to allow them to make informed decisions about the company. OSFI's response to this comment could infer that policyholders should be prepared and responsible to perform their own due diligence, by reviewing the public disclosures, before purchasing a product from a life insurer (or choosing to maintain a product in force).

Conclusion

In some respects, the new public disclosure requirements in the Disclosure Guideline do emulate public company disclosure requirements in the context of the capital markets. And, in many ways, life insurance policyholders are investing in their life insurance company, depending upon the product. Putting aside the general liquidity issues with respect to life insurance products compared to publicly-traded securities, the new disclosure requirements should benefit policyholders and other stakeholders in assessing the soundness and solvency of their life insurer by giving them a new avenue to review the information disclosed and make an assessment, i.e. in addition to relying upon the rating agencies, or other public disclosure where the life insurer is publicly traded.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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