

OSFI UPDATES ITS TRANSACTION INSTRUCTIONS FOR FRFIS' PURCHASE OR REDEMPTION OF SHARES AND REDUCTION OF STATED CAPITAL

Posted on August 29, 2018

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On August 17, 2018, the Office of the Superintendent of Financial Institutions (“**OSFI**”) revised its transaction instructions relating to the consent and reporting obligations of Federally Regulated Financial Institutions (“**FRFIs**”) entering into transactions to purchase (for cancellation) shares, redeem shares or to reduce stated capital, all of which are subject to OSFI’s deemed approval process. The revisions expand on previously published transaction guidance and require FRFIs to provide OSFI with more in-depth disclosure before a share purchase for cancellation, redemption or stated capital reduction is approved.

Share Purchase or Redemption Transactions

Pursuant to the applicable governing legislation (i.e., the *Bank Act*, *Trust and Loan Companies Act*, *Insurance Companies Act* or *Cooperative Credit Associations Act*) (the “**Acts**”), an FRFI can purchase for the purpose of cancellation any shares issued by it, or redeem any redeemable shares issued by it, if certain conditions are met, including the prior consent of the Superintendent (subject to a few discrete exceptions).

In its application for consent, an FRFI is generally expected to provide OSFI with the following information and documentation:

- a description of and rationale for the transaction including, the number and type of shares to be purchased or redeemed, the rationale supporting the purchase or redemption price and the proposed timing;
- a certified copy of the board resolution authorizing the transaction;
- a copy of any proposed disclosure prepared in connection with the transaction and required by another regulatory authority, such as a stock exchange or securities commission;
- an analysis of the effect of the transaction on the applicant’s financial position and risk profile including details of the projected changes to the applicant’s balance sheet, capital position and, in the case of deposit-taking institutions, liquidity position (if material, the projected changes are to be provided by way of comparative pro forma balance sheet, capital position and liquidity position that confirms compliance

with applicable targets), together with all relevant assumptions and a breakdown of the calculation of all relevant tests and ratios;

- confirmation that following the transaction the applicant FRFI will be in compliance with all relevant policies; and

for the redemption of shares, confirmation that the redemption price is consistent with the formula set out in the applicant's by-laws or conditions attaching to the shares.

Stated Capital Reduction Transactions

Pursuant to the Acts, the stated capital of an FRFI may be reduced by special resolution (the "**Special Resolution**") so long as certain conditions are complied with. A Special Resolution is a resolution passed by a majority of not less than 2/3rds of the votes cast by the shareholders, policyholders or members (as the case may be) of the FRFI who voted in respect of that resolution, or signed by all the shareholders, policyholders or members (as the case may be) entitled to vote. Subject to a few specific exceptions, the Special Resolution has no effect until it is approved in writing by the Superintendent. An application for approval must be made within three months after the time of the passing of the Special Resolution and a copy of the Special Resolution, together with a notice of intention to apply for approval (the "**Notice**"), must have been published in the Canada Gazette prior to submission of the application. If the Notice is published prior to the passing of the Special Resolution, additional requirements may apply.

In the application, FRFIs are generally expected to provide OSFI with the following:

- the rationale for the transaction, statements showing the number of shares of each class of shares of the FRFI that are issued and outstanding, the proposed timing and the amount of the proposed reduction;
- proof of publication of the Notice;
- confirmation that the applicant has not, since publication of the Notice, received any objections related to the Notice, or has addressed any objection received (together with a description of the manner in which each objection was addressed);
- an executed copy of the Special Resolution which authorizes the transaction and specifies the stated capital account or accounts from which the reduction will be taken;
- results of voting by class of shares in respect of the Special Resolution;
- an analysis of the effect of the reduction of stated capital on the financial position and risk profile of the applicant, including a comparative pro forma balance sheet, capital position and, in the case of deposit-taking institutions, liquidity position, together with relevant assumptions and a breakdown of the calculation of all relevant tests and ratios; and
- confirmation that, following the transaction, the applicant will be in compliance with all relevant policies.

The required supporting documentation can be submitted by email to approvalsandprecedents@osfi-bsif.gc.ca. Under this approval regime, OSFI generally will make a decision to grant or deny approval within 30 days of receiving the prescribed information.

Comment

The enhanced information requirements associated with these approvals are consistent with OSFI's focus on FRFI disclosure and transparency and are designed to provide OSFI with an increased ability to monitor FRFIs' compliance with financial and governance obligations when entering these types of transactions. Note, however, that the requirements set out in the transaction instructions may not be exhaustive. The instructions provide that OSFI may request additional information, take into account other matters, impose terms and conditions on providing the Superintendent's consent or require certain undertakings. Applicants should therefore be prepared for the approval process to be more of an iterative progression which may evolve based on the information provided.

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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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