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# Advisory

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**Category:** Regulatory & Legislative

**NOTICE\***

**Subject:** Self-dealing – Asset transactions in a restructuring

**No:** 2003 - 03

**Date:** February 2003

**Revised:** April 2004

**Introduction:** A federally regulated financial institution (FRFI) may, with the approval of the Superintendent, acquire any asset from, or dispose of any asset to, a related party as part of, or in the course of, a restructuring. This Advisory provides guidance on the circumstances under which the Office of the Superintendent of Financial Institutions (OSFI) would consider such an application.

## Legislative References:

Subsection 494(4) of the [Bank Act](#)

Subsection 482(4) of the [Trust and Loan Companies Act](#)

Subsection 527(4) of the [Insurance Companies Act](#)

Subsection 418(3.1) of the [Cooperative Credit Associations Act](#)

**Interpretation:** The self-dealing regime is based on a three-tier approach. First, there is a general ban, with some exceptions, on all transactions with related parties. Second, permitted transactions must generally be entered into on terms and conditions that are at least as favourable to the FRFI as market terms and conditions and are subject to certain internal control requirements. For example, management must establish procedures for complying with the self-dealing provisions, the conduct review committee must ensure the effectiveness of these procedures, and board approval is required for certain transactions. Third, there is a need for pre-clearance with the Superintendent for certain transactions.

One of the underlying objectives of the self-dealing regime is generally to preclude related-party transactions since these transactions could result in owners and other related parties drawing inappropriate benefits – their position of influence or control over the FRFI could be to the detriment of the institution.

In essence, the legislation provides that a FRFI may enter into asset transactions with a related party where:

- a) the value of the transaction is nominal or immaterial to the FRFI (for measurement criteria, see OSFI *Bulletin E-6, Materiality Criteria for Related Party Transactions (banks, trust and loan companies and cooperative credit associations; life insurance companies and property and casualty insurance companies)*); FRFI purchases or otherwise acquires from a related party assets or securities of, or guaranteed by, the Government of Canada or the government of a province, or goods for use in ordinary course of its business;
- b) the FRFI sells to a related party any assets for money if an active market exists for those assets;
- c) the FRFI, in the normal course of its business, acquires or disposes of any assets, other than real property, from or to a related party that is a financial institution, if the arrangement has been approved by the Superintendent;
- d) the FRFI acquires or disposes of assets from or to a related party as part of, or in the course of, a restructuring, if the acquisition or disposition has been approved by the Superintendent;
- e) the transaction is exempted by order of the Superintendent where the legislation provides that the Superintendent must be satisfied that the decision of the FRFI to enter into the transaction has not been influenced in any significant way by a related party of the FRFI, and the transaction does not involve in any significant way the interests of a related party of the FRFI; and
- f) the transaction is exempted by the Regulations<sup>1</sup>.

An asset transaction referred to in paragraph d) above (i.e., is part of, or in the course of, a restructuring) would generally be expected to be part of a scheme to restructure the business and affairs or corporate structure of the FRFI or the FRFI's group and would involve a movement of assets within the FRFI's group (affiliates of the FRFI that are related parties<sup>2</sup>).

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<sup>1</sup> *Related Party Transactions (Banks) Regulations, Related Party Transactions (Insurance Companies) Regulations, Related Party Transactions (Trust and Loan Companies) Regulations and Related Party Transactions (Cooperative Credit Associations) Regulations.*

<sup>2</sup> Generally, subsidiaries of a FRFI, or where the parent is another FRFI, the parent, entities controlled by the parent and entities in which the parent has a substantial investment are not related parties.

This would include asset transactions where the FRFI is disposing of assets to one or more related parties as a result of the FRFI leaving a line of business, significantly altering a line of business, or transferring a line of business to other entities within the FRFI's group. Similarly, also included would be asset transactions where the FRFI is acquiring assets from one or more related parties as a result of a member of the FRFI's group leaving a line of business, significantly altering a line of business, or transferring a line of business to the FRFI.

OSFI expects this type of asset transaction to have one or more of the following attributes:

- be a material<sup>3</sup> transaction;
- not be in the normal course of the FRFI's business;
- be for consideration other than money; or
- involve a sale of assets by the FRFI for which there is no active market.

When making an application for the Superintendent's approval for the acquisition or disposition of assets as part of, or in the course of, a restructuring, a FRFI should refer to [Instruction Guide – Deemed Approvals](#) and to the document [DA No. 22](#) of Appendix A – Index of Instructions for guidance on the nature of information to be provided in support of its application.

<p>* 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.</p>
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<sup>3</sup> For the purposes of this Advisory, a material transaction is a transaction that is not permitted under the FRFI's nominal or immaterial criteria that were approved by the Superintendent.