



DRAFT: CONFIRMATION OF CAPITAL QUALITY – INNOVATIVE INSTRUMENTS

Legislative Authorities¹

- N/A

Information Requirements

The applicant is expected to provide:

1. Preliminary Prospectus and Prospectus
2. The following documents/agreements:
 - (a) Declaration of Trust;
 - (b) Share Exchange Agreement;
 - (c) Administration Agreement;
 - (d) Subscription Agreement;
 - (e) Credit Agreement;
 - (f) Mortgage Sales, Pooling and Servicing Agreement (asset based);
 - (g) Debenture Purchase Agreement (loan based); and
 - (h) Asset Acquisition Agreement (loan based)
3. The following opinions:
 - (a) External Legal Opinion – the opinion should confirm that: a) the automatic exchange is enforceable, b) the holders of innovative instruments (innovatives) do not have recourse to the trust asset and c) the federally regulated entity (FRE) fully controls (i.e. both legal and de facto) the trust and holds, at all times, all its voting securities.
 - (b) External Tax Opinion – the opinion should confirm the deductibility of interest on the loan from the FRE to the trust for tax purposes (for a loan-based innovative) or the interest earned from the assets (for an asset-based innovative) is not included in the calculation of income of the FRE.
 - (c) External Accounting Opinion – the opinion should describe the presentation of the innovatives on the balance sheet (required for an asset-based only.)

¹ The [Guideline Innovative Instruments Included in Tier 1 Capital \(interim appendix to Guideline A – CAR/MCCSR\)](#) is applicable as well as related Advisories. (OSFI Guidance)

-
4. The following undertakings:
 - (a) Over-collateralization, if applicable – the FRE will not exceed the over-collateralization percentage approved by the Superintendent.
 - (b) Tax Deductibility – the FRE will not request approval to redeem the innovatives if the FRE is denied a tax deduction for interest paid on the deposit note by the Canada Revenue Agency unless a Tax Event has also occurred (loan based).
 - (c) Asset Acquisition undertaking – upon maturity of the loan from the FRE to the trust, the trust will purchase assets so that the innovative is asset based (loan based).
 5. A letter substantiating that the rate on the preferred shares to be issued upon an automatic exchange, is the lower of the rate on the innovatives and the market rate for preferred shares as of the date of the issuance of the innovatives.
 6. A comparison of the features of the innovative structure to OSFI's Interim Appendix.
 7. A calculation that at the end of the quarter in which the innovatives are issued, the FRE will be in compliance with OSFI's capital composition limits.
 8. The rationale for requiring over-collateralization of the trust greater than that permitted in OSFI's interim appendix and pro-forma financial statements showing the over-collateralization figures for a 5 year period, if applicable.
 9. An outline of the precedent setting aspects of the structure and the capital instruments, if any.
 10. Confirmation from an Officer² that, to the best of his/her knowledge, the innovative structure and capital instruments are in compliance with OSFI Guidance.
 11. The proposed disclosure of the innovatives in the FRE's audited financial statements.

Administrative Guidance

1. OSFI may require capital instruments reviewed post-issuance and that are found not to comply with OSFI Guidance to be eliminated from total capital or reclassified as a different tier of capital. Where the FRE has applied for and received a capital confirmation, OSFI will consider whether the material submitted with the application contained a material misstatement of the facts or omission of the facts in reaching its decision.
2. The terms and conditions of the innovatives and the preferred shares must meet all the requirements to qualify as capital pursuant to OSFI Guidance.
3. A confirmation of capital quality is not a legislative requirement or OSFI Guideline requirement. A request to confirm capital quality is at the discretion of the FRE.

² Officer is defined in section 2 of the *Bank Act, Trust and Loan Companies Act* and *Insurance Companies Act*.

-
4. This confirmation is subject to a user pay fee as set out in the [Charges for Services Provided by the Office of the Superintendent of Financial Institutions Regulations 2002](#).

The information requirements and administrative guidance are intended to satisfy typical capital confirmations. They have been derived from OSFI's experience in assessing capital confirmations. Financial Institutions who provide all information and material requested can generally expect a more timely assessment of their capital confirmation. As appropriate to the circumstances, OSFI may request additional information, take into account other matters, impose terms and conditions, or require undertakings.