



Advisory

Category: Regulatory & Legislative

[NOTICE*](#)

Subject: Substantial Investments – Trust and loan companies

No: 2003 - 06

Issued: October 2003

Introduction: This Advisory provides an overview of how the Office of the Superintendent of Financial Institutions (OSFI) administers and interprets the substantial investment regime for trust and loan companies (T&Ls) set out in the *Trust and Loan Companies Act* (Act).

In this Advisory, the acronym

- RE means “regulated entity”: an entity referred to in any of paragraphs 453(1)(a) to (j) of the Act – i.e., a federal financial institution, a bank holding company, an insurance holding company, or a provincial or foreign regulated financial institution;
- FRE means “federally-regulated entity”: an entity referred to in any of paragraphs 453(1)(a) to (f) – i.e., a federal financial institution, a bank holding company or an insurance holding company;
- PFFI means “provincial or foreign financial institution”: an entity referred to in any of paragraphs 453(1)(g) to (j) – i.e., a provincial or foreign regulated financial institution; and
- 453(2) entity means an entity whose business is limited to one or more of the activities referred to in any of paragraphs 453(2)(a) to (f).

Legislative References:

Part IX – Investments, sections 449 to 472 of the Act
Exemption from Restrictions on Investments (Trust and Loan Companies) Regulations
Minority Investment (Trust and Loan Companies) Regulations
Specialized Financing (Trust and Loan Companies) Regulations

Permitted Substantial Investments: Except as permitted under the Act, a T&L may not acquire control of, or a substantial investment in, another entity. The term “substantial investment” is defined in section 10 of the Act. In essence, a T&L has a substantial investment in a body corporate if the aggregate of the voting rights attached to any of the voting shares of the body corporate beneficially owned by the T&L and any of its subsidiaries exceeds 10 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate, or if the aggregate of any shares (voting and non-voting) of the body corporate beneficially owned by the T&L and any of its subsidiaries represents ownership of greater than 25 per cent of the shareholders' equity of the body corporate. A T&L has a substantial investment in an unincorporated entity if the aggregate of any ownership interests beneficially owned by the T&L and its subsidiaries exceed 25 per cent of all the ownership interests into which the entity is divided. The word “control”, as defined in section 3 of the Act, includes both “de jure” and “de facto” control. For purposes of the Act, an entity is a subsidiary of another entity if it is controlled by the other entity. This means, for example, that an entity is a subsidiary of another entity if it is de jure or de facto controlled by the other entity.

Section 451 of the Act sets out the general restriction on the acquisition of control, or the holding, acquisition or increasing of substantial investments, by a T&L in other entities and provides for the following four categories of permitted substantial investments¹:

1. investments in “permitted entities”;
2. indirect investments;
3. investments for a limited period of time; and
4. investments made under the *Specialized Financing Regulations*.

An overview of each of these categories of permitted substantial investments follows.

1. *Investments in Permitted Entities* (subsection 451(1) of the Act)

The term “permitted entity” means an entity in which a T&L is permitted to acquire a substantial investment under section 453 of the Act. In essence, this section provides that a T&L may acquire control of, or acquire or increase a substantial investment in:

- a) a FRE, provided that the T&L meets the control requirements set out in subsection 453(4);
- b) a PFFI, provided that the T&L meets the approval and control requirements set out in subsections 453(4) to (6);

¹ In addition to the requirements contained in section 451, T&Ls must comply with section 450, which states that T&Ls must adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

- c) a 453(2) entity, other than an entity engaging in an activity prescribed for the purpose of paragraph 453(2)(f), provided that:
 - (i) the entity does not engage in the business of accepting deposits or activities referred to in any of paragraphs 453(3)(a) to (e),
 - (ii) the T&L meets the approval and control requirements set out in subsections 453(4) to (6); and
- d) an entity engaging in prescribed activities, under prescribed terms and conditions, if any are prescribed (paragraph 453(2)(f)), provided that the T&L meets the Ministerial approval requirement under subsection 453(5).

Appendix A provides a detailed description of the various classes of permitted entities and the applicable requirements (i.e., approval, control, and business restrictions).

1.1. Approval requirement (subsections 453(5) to (7) of the Act)

The prior approval of the Minister or of the Superintendent may be required where a T&L wishes to acquire control of, or a substantial investment in, a permitted entity.²

Where a T&L wishes to acquire a significant interest (more than 10 per cent of any class of shares) in a FRE, the approval of the Minister is required under the ownership provisions of the applicable federal financial institutions statute. The Minister considers a broad range of factors in assessing transfers of ownership of a FRE such as the impact of any integration of the businesses and operations of the applicant, and the best interests of the financial system in Canada.

Generally, the prior approval of the Superintendent is required for a T&L to acquire control of, or acquire or increase a substantial investment in, a PFFI, or in an unregulated entity that engages in financial intermediary activities³ that expose the entity to material market or credit risk. In certain circumstances, the acquisition of control of such an entity would instead require the prior written approval of the Minister. The approval process permits OSFI to ensure that the proposed investment would not expose the T&L to undue risk or hinder OSFI's ability to supervise the T&L. In addition, the Minister's approval is required where the entity engages in information services, Internet activities, or in the promotion, sale, delivery or distribution of financial products or services to the public.

Where no prior approval is required to acquire control of, or to acquire or increase a substantial investment in, a permitted entity, OSFI may review a T&L's investment in the course of its

² See Appendix A for circumstances where either the Minister's or the Superintendent's approval would be required.

³ An example of an entity that is considered to be engaged in financial intermediary activities is one which raises money through issuing securities or otherwise borrows money and uses the proceeds to make loans or enter into any other similar arrangements for advancing funds or credit.

ongoing supervisory process. This review is more likely to occur if the investment is material or presents a significant change in the business strategy of a T&L. As part of the review, OSFI may require a T&L to provide detailed information regarding the investment, including details of the consideration paid, integration plan and anticipated impact of the investment on the T&L's risk profile and on its ability to meet capital adequacy requirements. If prudential issues were identified, OSFI would require the T&L to take appropriate corrective measures. **Accordingly, OSFI encourages T&Ls to notify their OSFI Relationship Manager promptly when such investments in permitted entities are made, particularly if the investment may raise prudential concerns.**

Note that section 454 streamlines the regulatory approval process by eliminating some approvals. This section applies where a T&L would, through its acquisition of control of an entity (the parent entity) for which an approval of the Minister is required, acquire control of, or acquire or increase a substantial investment in, other entities (indirect investments) for which an approval of the Minister or the Superintendent would be required. It also applies where a T&L would, through its acquisition of control of an entity (the parent entity) for which an approval of the Superintendent is required, acquire control of, or acquire or increase a substantial investment in, other entities (indirect investments) for which an approval of the Superintendent would also be required. For this streamlined regime to apply, the T&L must, prior to obtaining the Minister's or the Superintendent's approval to acquire control of the parent entity, disclose to the Minister or the Superintendent in writing all indirect investments that it would also acquire as a result of its acquiring control of the parent entity.

1.2. Control requirement (subsection 453(4), (8) to (11) of the Act)

Typically, a T&L may not acquire a substantial investment in a RE, a financial holding entity⁴ or an entity that engages in financial intermediary activities that expose the entity to material market or credit risk, unless the T&L acquires de facto control of the entity. However, the T&L need not control the entity if the T&L complies with the requirements of the *Minority Investment Regulations*, which set out a minority investment cap of 50 per cent of regulatory capital for all such investments. In addition, if the entity is a foreign entity, and the laws or customary business practices of the foreign country do not permit the T&L to control the entity, the T&L may still acquire a substantial investment in that entity but must include the investment in calculating its minority investment cap.

A key feature of the control requirement is to address concerns over risks to reputation to which a T&L is exposed when it has a substantial investment in an entity whose activities are closely related to the business of banking, insurance, financial intermediation or investment. It is designed to ensure that if the entity were to encounter financial difficulties, the T&L would be in a better position to influence the entity's management on how best to correct the problems.

⁴ An entity whose business includes the acquisition or holding of shares of, or ownership interests in, entities in which a T&L is permitted to hold or acquire, including a specialized financing entity.

In addition, subsection 455(4) of the Act provides that a T&L, in the course of acquiring control of, or within a reasonable time after acquiring control of, any permitted entity, other than a FRE, must obtain from the permitted entity an undertaking to provide the Superintendent with reasonable access to its records. This is an important element of OSFI's ability to supervise T&Ls on a consolidated basis.

1.3. Business restrictions (subsection 453(3) of the Act)

Where the permitted entity is a RE, the Act does not impose any restrictions on the RE's business activities. However, where the permitted entity is a 453(2) entity⁵, its business activities must comply with the restrictions set out in subsection 453(3) of the Act in order for a T&L to acquire control of, or acquire or increase a substantial investment in, that entity. In particular, a T&L may not acquire control of, or acquire or increase a substantial investment in, a 453(2) entity if the entity engages in the business of accepting deposit liabilities, or if the activities of the 453(2) entity include:

- a) dealing in securities, except as may be permitted to a T&L, mutual fund entity or mutual fund distribution entity;
- b) engaging, in Canada, in personal property leasing or residential mortgage activities of a type that a T&L is precluded from engaging in;
- c) engaging in fiduciary activities;
- d) being a trustee for a trust;
- e) undertaking insurance activities other than those that a T&L is permitted to undertake;
- f) acquiring control of or acquiring or holding a substantial investment in another entity unless:
 - (i) in the case of a 453(2) entity that is controlled by the T&L, the T&L itself would be permitted to acquire a substantial investment in the other entity; or
 - (ii) in the case of a 453(2) entity that is not controlled by the T&L, the T&L itself would be permitted to acquire a substantial investment in the other entity under subsection 453(1) or (2) – i.e., “permitted entity” without regard to the approval and control requirements in subsections 453(4) to (6)⁶; subsection 451(2) – i.e., indirect investment (see section 2 below); paragraph 451(3)(b) or (c) – i.e., loan workout or realization of a security interest (see section 3 below); or subsection 451(4) – i.e., specialized financing (see section 4 below); or
- g) any prescribed activity.

⁵ In this subsection, the reference to a 453(2) entity should be read as an entity whose business is limited to one or more of the activities referred to in any of paragraphs 453(2)(a) to (e).

⁶ See *Exemption from Restrictions on Investments Regulations*.

This is an ongoing requirement. As long as a T&L controls, or has a substantial investment in, the 453(2) entity, the business activities of that entity must comply with these restrictions. On the day a T&L becomes aware of a change that causes the business activities of the 453(2) entity to cease to be in compliance with these restrictions, the entity ceases to be a “permitted entity” and the T&L is deemed to have acquired a temporary investment in the entity (see section 469 of the Act).

2. *Indirect Investments* (subsection 451(2) of the Act)

Subsection 451(2) of the Act provides that where a T&L controls, or acquires control of, a RE, the T&L may, through the RE, acquire control of, or acquire or increase a substantial investment in, an entity other than a permitted entity⁷. The T&L may do so in either of two ways. The T&L may acquire control of a RE that already has control of, or a substantial investment in, the entity. Alternatively, following the T&L’s acquisition of control of the RE, the RE may acquire control of, or acquire a substantial investment in, the entity by way of an acquisition of shares or ownership interests in the entity.

As mentioned in section 1 of this Advisory, in order for a T&L to acquire control of, or acquire or increase a substantial investment in, a RE or a 453(2) entity pursuant to section 451(1), the T&L must comply with the requirements set out in subsections 453(3) to (6).

However, subsection 451(2) provides the T&L with an alternative means to acquire control of, or acquire or increase a substantial investment in a RE or a 453(2) entity, as long as the investment is made through a RE that is controlled by the T&L.

More specifically, where the T&L makes an investment in an entity through a RE that is a FRE, subsection 451(2) does not impose any requirements because all FREs are subject to substantially the same substantial investment regime. For example, if a T&L were directly to acquire control of a federal insurance company, the T&L would require the Minister’s approval for the insurance company acquisition under the ownership provisions of the *Insurance Companies Act*, but would not require formal approvals for all entities controlled by the insurance company or entities in which the insurance company has a substantial investment. These downstream entities of the insurance company would essentially be of a type in which the T&L would itself be permitted to control or have a substantial investment. In addition, for the insurance company to acquire these downstream entities originally, the insurance company would itself have had to comply with requirements similar to those contained in section 453 of the Act. Similarly, in making new substantial investments or acquiring control of new entities, the insurance company would be required, under the *Insurance Companies Act*, to comply with approval and control requirements similar to those contained in section 453.

⁷ Where a T&L controls, or acquires control of, a RE, subsection 451(1) permits the T&L to acquire, through the RE, control of, or a substantial investment in, a permitted entity.

Similarly, where the T&L makes an investment in an entity through a RE that is a PFFI, subsection 451(2) does not impose any requirements so as not to hinder the PFFI's ability to compete with its peers in its home jurisdiction. Given that PFFIs are regulated in their home jurisdiction, the provincial or foreign regulator has the responsibility to ensure that their proposed investments, corporate affiliation or structure would not expose the PFFI to undue risk or hinder effective supervision. As discussed in section 1.1 of this Advisory, an approval is required for a T&L directly to acquire control of, or acquire or increase a substantial investment in, a PFFI. At that time, OSFI generally assesses the regulatory framework under which the PFFI operates. If prudential issues are identified, OSFI may, as provided for in subsection 455(3), enter into an agreement with the home regulator concerning the activities of the PFFI or any other matter OSFI considers appropriate. In addition, as provided in subsection 455(2), where the T&L acquires control of a PFFI, OSFI may require the T&L to provide it with undertakings concerning such entity.

Although subsection 451(2) does not impose any approval, control and business restrictions, where the T&L, through a PFFI, acquires control of, or acquires or increases a substantial investment in, another entity, OSFI may review a T&L's indirect investments in the course of its ongoing supervisory process. This review is more likely to occur if the investment is material or presents a significant change in the business strategy of a T&L. As part of the review, OSFI may require a T&L to provide detailed information regarding the investment, including details of the consideration paid, integration plan and anticipated impact of the investment on the T&L's risk profile and on its ability to meet capital adequacy requirements. If prudential issues were identified, OSFI would require that the T&L take appropriate corrective measures. **Accordingly, OSFI encourages T&Ls to notify their OSFI Relationship Manager promptly when such investments are made through a PFFI, particularly if the investment may raise prudential concerns.**

3. *Investments for a Limited Period of Time* (subsection 451(3) of the Act)

Sections 456 to 458 of the Act permit T&Ls to acquire control of, or acquire or increase a substantial investment in, any entity, whether or not it is a permitted entity, provided that the T&L takes all steps necessary to dispose of that substantial investment within a specified period.

These substantial investments are classified in three categories:

- temporary investments;
- loan workouts; and
- realization of security interests.

Appendix B provides a description of the terms and conditions applicable to each of these categories.

Where a T&L acquires control of, or a substantial investment in, an entity by way of a temporary investment, the T&L must, within two years,

- a) do all things necessary to ensure that it no longer controls the entity or has a substantial investment in the entity, or
- b) obtain the permission of the Superintendent to retain control of the entity or to continue to hold a substantial investment in the entity for any further period or periods, which in some cases could be an indeterminate period.

However, where the entity is an entity for which the approval of the Minister is required under subsection 453(5)⁸, the T&L must, within 90 days, apply for the Minister's approval or do all things necessary to ensure that it no longer controls the entity or has a substantial investment in the entity. Because of the risk of having to divest if the Minister's approval is not forthcoming, a T&L may wish to proceed under section 453 to acquire control of, or a substantial investment in, such an entity.

Generally, where a T&L acquires control of, or a substantial investment in, an entity by way of a loan workout or a realization of a security interest, the T&L must, within five years,

- a) do all things necessary to ensure that it no longer controls the entity or has a substantial investment in the entity, or
- b) obtain the permission of the Superintendent to retain control of the entity or to continue to hold a substantial investment in the entity for any further period or periods.
- c) if the entity is an entity in which the T&L would otherwise be permitted to acquire a substantial investment under section 453, obtain the approval in writing of the Minister to retain control of the entity or to continue to hold the substantial investment for an indeterminate period.

4. *Investments made under the Specialized Financing Regulations* (subsection 451(4) of the Act)

Subsection 451(4) provides another means by which a T&L may acquire control of, or hold, acquire or increase a substantial investment in, an entity other than a permitted entity. For purposes of this Advisory, acquisitions made under this authority are referred to as "specialized investments." The power to make such specialized investments enhances the ability of T&Ls to carry on their merchant banking or venture capital activities.

Specialized financing activities conducted by a T&L are subject to the constraints set out in the *Specialized Financing (Trust and Loan Companies) Regulations* (the Regs.). T&Ls can make specialized investments directly or through a specialized financing entity⁹ (SFE). In essence, the Specialized Financing Regulations impose the following constraints:

⁸ See Appendix A for circumstances where the Minister's approval would be required.

⁹ T&Ls may acquire control of, or a substantial investment in, SFEs pursuant to paragraph 453(2)(b) and such investments are subject to the approval and control requirements in subsections 453(4) to (6).

- **Non-permitted investments:** A T&L may make specialized investments in any entity other than:
 - a) a RE;
 - b) an entity that is engaged primarily in the leasing of motor vehicles in Canada for the purpose of extending credit to a customer or financing a customer's acquisition of a motor vehicle;
 - c) an entity that is engaged primarily in providing temporary possession of personal property, including motor vehicles, to customers in Canada for a purpose other than to finance the customer's acquisition of the property; or
 - d) an entity acting as an insurance broker or agent in Canada.
[s. 3 and para. 8(2)(b) of the Regs.]
- **Holding period:** The length of time that a T&L or SFE may hold control of, or a substantial investment in, an entity by way of a specialized investment is limited to 13 consecutive years.
[s. 4 and ss. 8(3) to (5) of the Regs.]
- **Equity cap:** The total book value of all shares or ownership interests that a T&L and any of its subsidiaries (including SFEs) may hold in an entity by way of a specialized investment shall not exceed \$250 million.
[s. 5 and para. 8(2)(c) of the Regs.]
- **Exposure limit to all SFEs and in-house specialized financing activities:** The sum of the following shall not exceed 10 per cent of the T&L's regulatory capital:
 - the aggregate book value of the shares or ownership interests held by the T&L and its subsidiaries in entities in which the T&L has itself made a specialized investment,
 - the aggregate book value of the shares or ownership interests held by the T&L and its subsidiaries in SFEs; and
 - the aggregate value of outstanding loans made by the T&L and its subsidiaries to SFEs.[s. 6 and para. 8(2)(d) of the Regs.]
- **Exposure limit to each SFE and its downstream entities¹⁰:** The sum of the aggregate book value of the shares or ownership interests held by the T&L and their respective subsidiaries in a SFE and its downstream entities and of the aggregate value of outstanding loans made by the T&L and its subsidiaries to the SFE and its downstream entities shall not exceed 25 per cent of the T&L's regulatory capital.
[ss. 7(1) and para. 8(2)(e) of the Regs.]

¹⁰ Downstream entities means all entities controlled by the SFE as well as all entities in which the SFE has a substantial investment.

- **Exposure limit to in-house specialized financing activities:** The sum of the aggregate book value of all shares or ownership interests held by the T&L and its subsidiaries in entities in which the T&L has itself made a specialized investment and of the aggregate value of all outstanding loans made by the T&L and its subsidiaries to these entities shall not exceed 25 per cent of the T&L's regulatory capital. [ss. 7(2) and para. 8(2)(e) of the Regs.]
- **Leverage limit:** A SFE that is controlled by a T&L, or in which a T&L has a substantial investment, shall not have outstanding debts to persons, other than the T&L and its subsidiaries, that exceed two times its equity. [para. 8(2)(a) of the Regs.]

Appendix C provides an example of the manner in which the equity cap and the exposure limits are applied, and Appendix D provides an example of the manner in which the leverage limit is applied.

* 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.

Appendix A – 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 *Trust & Loan Companies Act* and relevant Regulations

Classes of Entities	Control Requirement	Approval/Notice Requirement	Business Restrictions
<p>1. Regulated entities</p> <p>i.e., regulated entities engaging in the business of</p> <ul style="list-style-type: none"> • banking, • insurance, • providing fiduciary services, • a cooperative credit society, or • dealing in securities. 	<p>(a) FRFI¹, BHC¹ or IHC¹ [453(1)(a) to (f)]</p>	<p>De facto control except if in compliance with <i>MIR</i>¹ [453(4)(a)]</p>	<p>Minister's approval under ownership provisions of the relevant federal statute.</p>
	<p>(b) Provincially regulated financial institutions [453(1)(g), (h), (i)]</p>	<p>Same as 1(a) above</p>	<p>Superintendent's approval in all cases <i>except</i> where Minister's approval is required (i.e., where the T&L¹ acquires control of the entity from <u>a person</u> who is not a member of the T&L's group, as defined in subsection 449(2) of the Act). [453(5)(a) and (6)]</p>
	<p>(c) Foreign regulated financial institutions [453(1)(j)]</p>	<ul style="list-style-type: none"> • De facto control except if in compliance with <i>MIR</i> [453(4)(c)(i)] • No control requirement in cases where the foreign law does not permit control, but need to add investment in calculating minority investment cap for <i>MIR</i> [453(8)] 	<p>Superintendent's approval in all cases <i>except</i> where Minister's approval is required (i.e., where the T&L acquires control of the entity from <u>a FRE</u>¹ that is not a member of the T&L's group, as defined in subsection 449(2) of the Act). [453(5)(b) and (6)]</p>

¹ The following acronyms are used in this appendix: **BHC:** bank holding company as defined in section 2 of the *Trust and Loan Companies Act* (the Act)
FRE: FRFI, BHC and IHC
FRFI: federally regulated financial institution referred to in any of paragraphs 453(1)(a), (b), (d) or (e) of the Act
IHC: insurance holding company as defined in section 2 of the Act
T&L: trust and loan company
MIR: *Minority Investment (Trust and Loan Companies) Regulations*

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<p>2. Other financial intermediaries [453(2)(a)]</p> <p>i.e., <u>unregulated</u> entities engage in financial intermediary activities that entail material credit or market risks.</p>	(a) Factoring entity (Defined in <i>Factoring Entity Regs</i>)	<ul style="list-style-type: none"> De facto control except if in compliance with <i>MIR</i> [453(4)(c)(i)] No control requirement in cases where the foreign law does not permit control, but need to add investment in calculating minority investment cap for <i>MIR</i> [453(8)] 	Superintendent's approval only if the T&L is acquiring a non-controlling interest [453(6) and (7)(b)]	<ul style="list-style-type: none"> The entity is precluded from accepting deposit liabilities In addition, its substantial investments are subject to the same constraints that apply to a T&L [453(3)]
	(b) Financial leasing entity (Defined in 449(1))	Same as 2(a) above	Same as 2(a) above	Same as 2(a) above
	(c) Canadian finance entity ("finance entity" is defined in <i>Finance Entity Regs</i> as an entity, other than a financial institution ² , that engages in a business that includes: <ul style="list-style-type: none"> issuing credit, charge or payment cards; operating a credit, charge or payment cards plan; or making or refinancing loans, or entering in similar arrangements for advancing funds or credit). 	De facto control except if in compliance with <i>MIR</i> [453(4)(c)(i)]	Superintendent's approval in all cases except where Minister's approval is required (i.e., the T&L acquires control of the entity from a <u>FRE</u> that is not a member of the T&L's group, as defined in subsection 449(2) of the Act). [453(5)(b) and (6)]	<ul style="list-style-type: none"> Same as 2(a) above In addition, its insurance and residential mortgage lending activities are subject to the same constraints that apply to a T&L [453(3)]
	(d) Other financial intermediary, including a foreign finance entity	Same as 2(a) above	Same as 2(c) above	Same as 2(c) above

² Financial institution is defined in section 2 of the Act. In particular, it includes a foreign institution, which is also defined in section 2 of the Act.

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<p>3. Financial agents</p>	<p>This class includes entities whose business consists of:</p> <ul style="list-style-type: none"> • acting as financial agent, (including insurance broker); • providing investment counselling services; • providing portfolio management services; or • networking financial services. <p>[453(2)(a)]</p> <p>As well as a:</p> <ul style="list-style-type: none"> • mutual fund entity (The mutual fund entity must provide investment diversification and professional investment management to the holders of its shares or trust units.); or • mutual fund distribution entity. <p>[453(2)(e)]</p>	<p>No control requirement.</p>	<p>No approval or notice.</p>	<ul style="list-style-type: none"> • All of these permitted entities are precluded from accepting deposit liabilities. • In addition, their fiduciary, securities dealing, and substantial investments activities are subject to the same constraints that apply to a T&L. <p>[453(3)]</p>

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<p>4. Investment holding entities [453(2)(b)]</p>	<p>(a) Specialized financing entity (defined in <i>Specialized Financing Regs</i> as an entity that acquires or holds shares of, or ownership interests in, entities that a T&L may acquire control of, or hold, acquire or increase a substantial investment in, under 451(4))</p>	<ul style="list-style-type: none"> • De facto control, except if in compliance with <i>MIR</i> [453(4)(c)(i)] • No control requirement in cases where the foreign law does not permit control, but need to add investment in calculating minority investment cap for <i>MIR</i> [453(8)] 	<p>Superintendent’s approval in all cases. [453(6)]</p> <ul style="list-style-type: none"> • The permitted entity is precluded from accepting deposit liabilities. • In addition, its substantial investments are subject to the same constraints that apply to a T&L. [453(3) and <i>Specialized Financing Regs.</i>]
	<p>(b) Other investment holding entity i.e., an entity acquiring and holding investments that a T&L is permitted to hold under:</p> <ul style="list-style-type: none"> • 409 – less than substantial investments (portfolio investments) • 453 – permitted entities • 451(2) - indirect investments • 456 – temporary investments (only if the investment holding entity is controlled by the T&L) • 457 - loan workouts • 458 - realizations 	<ul style="list-style-type: none"> • No control if the entity does not control or hold any share of, or ownership interest in, <ul style="list-style-type: none"> – a regulated financial institution (class 1 entity) – a financial intermediary (class 2 entity) – a specialized financing entity (class 4(a) entity), or – an entity that is not a permitted entity [453(4)(c)(iii)] • De facto control, except if in compliance with <i>MIR</i> [453(4)(c)(i)] • No control requirement in cases where the foreign law does not permit control, but need to add investment in calculating minority investment cap for <i>MIR</i> [453(8)] 	<p>Superintendent’s approval only if the T&L is acquiring a non-controlling interest. [453(6) and (7)(a)]</p> <ul style="list-style-type: none"> • The permitted entity is precluded from accepting deposit liabilities. • In addition, its substantial investments are subject to the same constraints that apply to a T&L. [453(3)]

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Classes of Entities		Control Requirement	Approval/Notice Requirement	Business Restrictions
5. “Non-financial services” entities	(a) Entities that engage in <ul style="list-style-type: none"> – information services – Internet activities [453(2)(a)]	No control requirement	Minister’s approval [453(5)(d)]	<ul style="list-style-type: none"> • All of these permitted entities are precluded from accepting deposit liabilities • In addition, their substantial investments are subject to the same constraints that apply to a T&L [453(3)]
	(b) Entities that engage in the promotion, sale, delivery or distribution of financial services or products to the public [453(2)(d)]	No control requirement	Minister’s approval [453(5)(c)]	
	(c) Entities that engage in other activities, such as: <ul style="list-style-type: none"> – pre-1992 data processing activities in Canada³ – managing, holding or dealing with real property – specialized business management or advisory services – promoting merchandise or services to card holders – selling lottery, urban transit tickets – acting as custodian of property, receiver, liquidator or sequestrator [453(2)(a)]	No control requirement	No approval or notice	
	(d) Service entities that provide any services to the T&L, members of the T&L group and other financial services entity [453(2)(c)]	No control requirement	No approval or notice	

³ Data processing activities of a type that the T&L was engaged in prior to June 1, 1992.

Appendix A – Permitted Entities

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Classes of Entities		Control Requirement	Approval/Notice Requirement	Business Restrictions
5. “Non-financial services” entities (cont.)	(e) Real property brokerage services entities [453(2)(e)]	No control requirement	No approval or notice	
6. Prescribed entities	There is a regulation making authority to authorize a T&L to acquire control of, or acquire or increase a substantial investment in, an entity whose business would consist of prescribed activities. [453(2)(f)]	No control requirement unless prescribed by Regulations.	Minister’s approval unless exempted by Regulations. [453(5)(e)]	No restriction unless prescribed by Regulations.

Appendix B – Investments for a Limited Period

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For all purposes of interpreting and applying the law, users should consult the *Trust & Loan Companies Act* and relevant Regulations

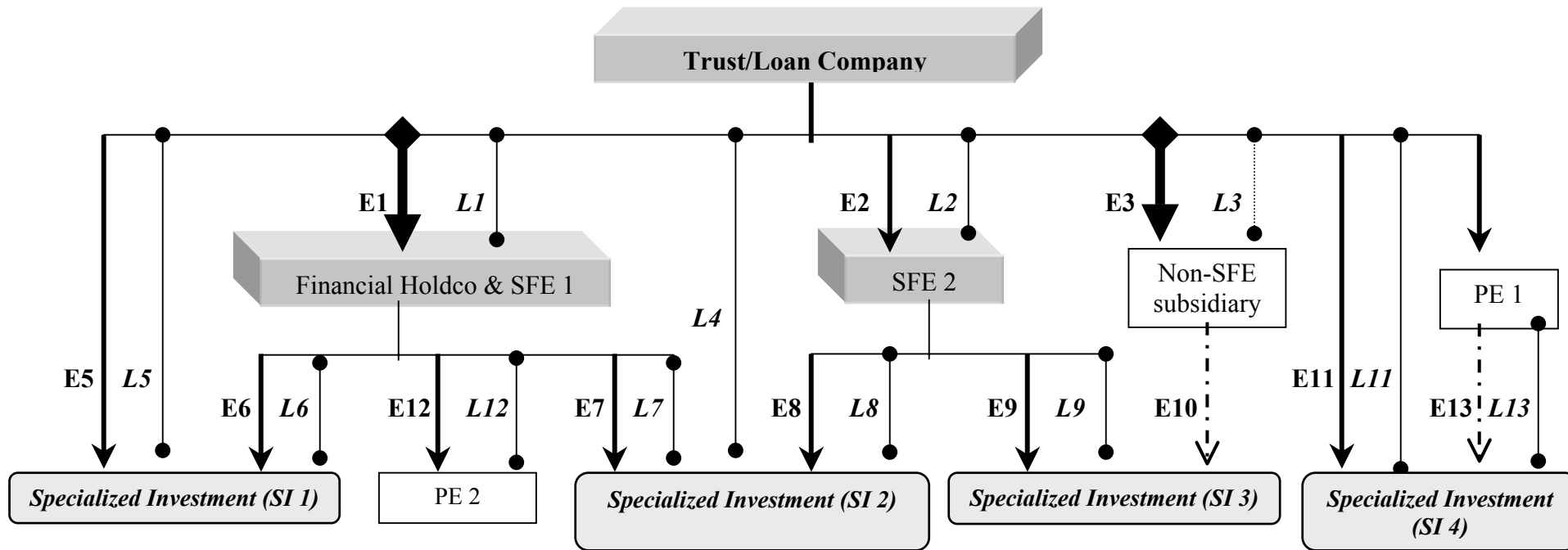
Statutory Terms and Conditions

<p>Temporary investments [451(3)(a) & 456]</p>	<p>These provisions provide that a T&L may acquire control of, or substantial investment in, any entity whether or not the entity would qualify as a “permitted entity”¹.</p> <p><u>Holding period:</u></p> <ul style="list-style-type: none"> initially 2 years or any other period (less or more) specified by Superintendent [456(1) or (2)]; period may be extended by Superintendent [456(3)]; where the entity is a non-permitted entity only because the T&L did not obtain the prior approval of the Minister, the T&L may only hold the investment for 90 days; period may be extended by Minister, including for indeterminate period [456(4)]; where the entity is a non-permitted entity only because the T&L did not obtain the prior approval of the Superintendent, period may be extended by Superintendent, including for an indeterminate period [456(5)].
<p>Loan workouts [451(3)(b) & 457]</p>	<p>Where an entity is in default with respect to a loan that a T&L or any of its subsidiaries had made to the entity, the T&L may acquire all or any of the shares of, or ownership interests in, (a) the entity (b) any affiliates of the entity or (c) a body corporate that is primarily engaged in the holding of shares of, ownership interests, or assets acquired from the entity to which the loan was made or any affiliates of that entity, whether or not the entity, the affiliate or the body corporate would qualify as a “permitted entity”¹.</p> <p><u>Holding period:</u></p> <ul style="list-style-type: none"> initially 5 years [457(2) or (3)]; period may be extended by Superintendent [457(4)]; an indeterminate period, with the approval of the Superintendent, where the loan was made to a foreign government or an entity controlled by a foreign government [457(6)]; an indeterminate period, with the approval of the Minister, where the entity is a “permitted entity”¹ [457(7)].
<p>Realization of a security interest [451(3)(c) & 458]</p>	<p>A T&L may, through the realization of a security interest held by the T&L or any of its subsidiaries, acquire control of, or a substantial investment in, any entity whether or not the entity would qualify as a “permitted entity”¹.</p> <p><u>Holding period:</u></p> <ul style="list-style-type: none"> initially 5 years [458(2) or (3)]; period may be extended by Superintendent [458(4)]; an indeterminate period, with the approval of the Minister, where the entity is a “permitted entity”¹ [458(5)].

¹ Where the entity could qualify as a “permitted entity”, the T&L may instead acquire control of, or a substantial investment in, the entity for an indeterminate period of time in accordance with subsections 453 (1) and (2), or through an RE in accordance with subsection 451(2) of the Act.

Appendix C – Exposure Limits to Specialized Financing Activities

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Control
 Substantial investment
 less than a substantial investment
 loans

“SFE”: specialized financing entity

“PE”: permitted entity

“E”: equity interest

“L”: loan

\$250 m. Equity Cap – per entity

SI 1: E5 + E6	PE 2: E12	SI 2: E7 + E8	SI 3: E9 + E10	SI 4: E11
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10% Regulatory Capital Limit

$E1 + L1 + E2 + L2 + E5 + E11$

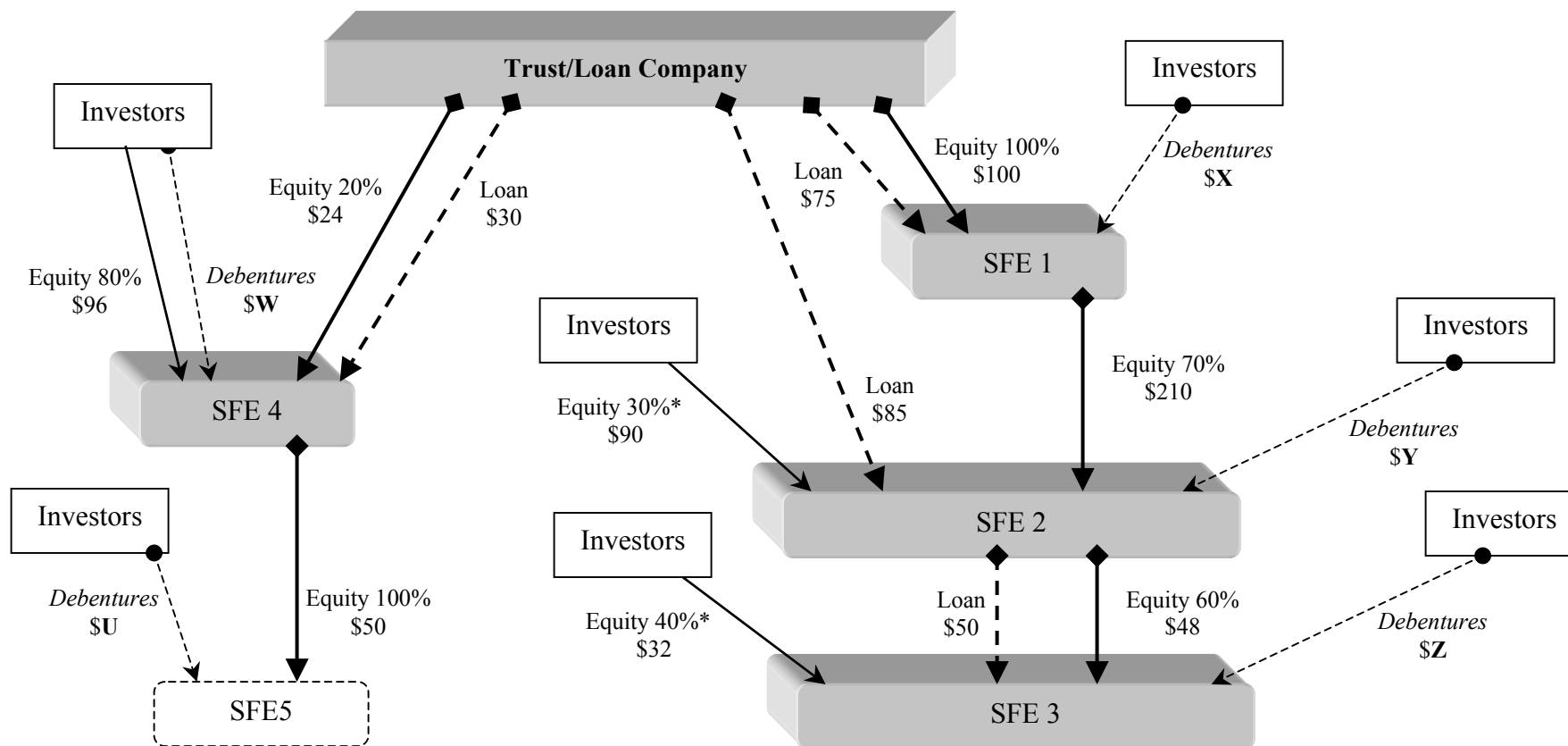
25% Regulatory Capital Limit

SFE 1: $E1 + L1 + E5 + L5 + L4$	SFE 2: $E2 + L2 + L4 + E10$	In-house: $E11 + L11$
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Per SFE and In-house – excluding exposure held through another SFE

Appendix D – Leverage Limits of Specialized Financing Entities

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SFE: means specialized financing entity

* Non-controlling interest in the SFE

Appendix D – Leverage Limits of Specialized Financing Entities

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Mathematical Formula of the leverage limit: $A - B < 2(C + D)$

Where

- A** is the value of all outstanding debts of both the SFE and all its subsidiaries that are also SFE as reported on their respective balance sheets on an unconsolidated basis,
- B** is the value of all outstanding debts of both the SFE and all its subsidiaries that are also SFE that are payable to the T&L and its subsidiaries,
- C** is the value of the excess of assets over liabilities (i.e. equity) of the SFE as reported on its balance sheet on an unconsolidated basis, and
- D** is the value of the non-controlling interest as reported on the SFE's balance sheet on a consolidated basis.

	<i>A</i>	-	<i>B</i>	<i>< 2 x</i>	(<i>C</i>	+	<i>D)</i>
SFE 1	X + Y + Z + 75 + 85 + 50		75 + 85 + 50		100		90 + 32
	<i>X+Y+Z < 444</i>						
SFE 2	Y + Z + 85 + 50		85 + 50		210 + 90		32
	<i>Y+Z < 664 but Y+Z < 444 — X</i>						
SFE 3	Z + 50		50		48 + 32		0
	<i>Z < 160 but Z < 444 — X — Y</i>						
SFE 4	W + 30		30		24 + 96		0
	<i>W < 240</i>						
SFE 5	Leverage limit does not apply – SFE 5 is not controlled by the T&L and the T&L does not have a substantial investment in SFE 5						