



Ruling

Category: Foreign Banks

[NOTICE*](#)

Subject: Investments – Financial services entity

No: 2008 – 04

Issue: The issue was whether a Canadian subsidiary of a foreign bank (FB) that would assist the FB in providing services to investment funds would be a financial services entity for the purposes of Part XII of the *Bank Act* (BA), thus causing the FB to have a financial establishment in Canada.

Background: An FB which, from outside Canada, had undertaken to provide portfolio management services to investment funds, proposed to establish a Canadian subsidiary to assist the FB in managing the funds. The activities of the subsidiary would be limited to:

- (a) preparing and maintaining certain books and records of the investment funds (e.g., accounting records, corporate records, shareholders/unitholders registry);
- (b) preparing the net asset valuations and financial statements of the investment funds managed by the FB;
- (c) performing certain of the investment funds' compliance and general administration functions (e.g., reviewing investment fund prospectuses, reviewing agreements with service providers, arranging shareholders/unitholders and directors meetings, drafting minutes of these meetings, registering shareholders/unitholders subscriptions and redemptions); and
- (d) in connection with the above, acting as a liaison between the FB and other entities that provide services to the investment funds (e.g., bankers, brokers/dealers or custodians).

Considerations: As stated in the legislative references below, the BA defines the term “financial services entity” broadly. OSFI was of the view that, in this case, the issue was whether the aforementioned activities of the subsidiary would cause the subsidiary to be engaged in the provision of portfolio management services, an activity listed in the definition of “financial services entity”.

In the case at hand, the subsidiary would not manage the assets of the investment funds, which is the key function of a portfolio manager. It would only provide “back-office” services to the FB to assist it in the provision of portfolio management services to the FB’s customers, the investment funds.

Conclusion: OSFI concluded that the proposed subsidiary would not be a financial services entity under Part XII of the BA.



Legislative References: Subsection 507(1) defines “financial services entity” as an entity that engages in activities where at least 10 per cent of its business (total assets or revenue – determined in accordance with the *Manner of Calculation (Foreign Banks) Regulations*) consists of one or more of the following:

- (a) providing any financial service;
- (b) acting as a financial agent;
- (c) providing investment counselling and portfolio management services;
- (d) issuing payment, credit or charge cards and, in cooperation with others, including other financial institutions, operating a payment, credit or charge card plan;
- (e) engaging in the activities referred to in the definition of “mutual fund entity” or “mutual fund distribution entity” in subsection 464(2);
- (f) engaging in prescribed activities, under prescribed terms and conditions, if any are prescribed;
- (g) engaging in any activity referred to in paragraphs (a) to (f) as an agent for another entity referred to in any of those paragraphs or in any of paragraphs 468(1)(a) to (j); or
- (h) acquiring or holding control of, or becoming a major owner of, an entity referred to in any of paragraphs (a) to (g) or any of paragraphs 468(1)(a) to (j).

Table of Concordance: The *Cooperative Credit Associations Act*, *Insurance Companies Act* and *Trust and Loan Companies Act* do not contain similar provisions.

* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI’s consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling’s publication.