



Ruling

Category: Capital Structure

NOTICE*

Subject: Holding of shares in the federally regulated financial institution or its controlling body corporate

No: 2001-02

Issue: As part of an insurance company's plan to establish a new holding company, the insurance company proposed to issue its shares to one of its subsidiaries and then, as part of a series of transactions occurring virtually simultaneously, but sequentially, the subsidiary would purchase for cancellation those of its shares held by the insurance company. As a result, the subsidiary would become the holding body corporate of the insurance company. The issue was whether the insurance company would be in breach of paragraphs 74(a) and (c) of the *Insurance Companies Act (ICA)*. Those paragraphs prohibit an insurance company from holding shares of itself or of any body corporate that controls it, and from permitting any of the insurance company's subsidiaries to hold shares of the insurance company or any body corporate that controls the insurance company.

Background: The insurance company proposed to establish a new holding company under the ICA for the purposes of holding directly or indirectly its shares and its operating subsidiaries. The establishment of the holding company would include the following steps:

1. the insurance company incorporates and acquires all the shares of a shell company that will eventually become the holding company;
2. the insurance company issues common shares to the shell company, which, because of its ownership of those shares, becomes the insurance company's holding company;
3. the holding company then purchases for cancellation all of its shares held by the insurance company.

It is proposed that steps 2 and 3 would occur in sequence, as part of the closing of the transaction, but would be effective at the same moment in time, and that step 2 would not occur unless there was certainty that, immediately thereafter, step 3 would occur.

Considerations: Because both steps 2 and 3 would be implemented in sequence and be effective at the same moment in time, OSFI concluded that the insurance company would not “hold” the shares of its holding company within the meaning of section 74 of the ICA since those shares were being purchased for cancellation as part of the same transaction in which the subsidiary became the holding company. Similarly, the holding company would not “hold” the shares of the insurance company within the meaning of section 74 since those shares were acquired as part of the same transaction in which the holding company ceased to be a subsidiary of the insurance company.

Conclusion(s): The manner in which the transaction was structured would not cause the insurance company to be in breach of paragraphs 74(a) and (c) of the ICA.

Legislative References:

Section 74 of the ICA provides that a company shall not

- (a) hold shares of the company of any body corporate that controls the company;

- (b) permit any of its subsidiaries to hold any shares of the company or of any body corporate that controls the company; or

Table of Concordance:

Section Description	BA	TLCA	ICA	CCAA
Holding of own shares	70	73	74	78

The table of concordance makes cross-references to other provisions of federally regulated financial institution legislation that may be of relevance to the reader.

<p>* 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.</p>
--