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Canada

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Introduction

Banks in Canada have been continuously recognised as amongst the soundest and safest across the globe and well positioned for future challenges.

Regulatory architecture: Overview of banking regulators and key regulations

Banking in Canada falls under federal jurisdiction such that the Parliament of Canada has legislative authority over "Banking, Incorporation of Banks, and the Issue of Paper Money". The primary piece of legislation that governs banking in Canada is the *Bank Act*[1] and its regulations.

Banks in Canada are supervised by multiple regulators, with the Office of the Superintendent of Financial Institutions (OSFI) responsible for prudential regulation and financial stability, and the Financial Consumer Agency of Canada (FCAC) responsible for consumer protection and market conduct. OSFI regulates and supervises all banks under its supervisory framework, develops and interprets legislation, and issues guidelines. The FCAC ensures that federally regulated financial institutions (FRFIs) comply with consumer protection measures, and helps to keep consumers informed. The FCAC also supervises payment card network operators and external complaints bodies. The FCAC's Enforcement Division investigates and evaluates possible concerns, and has the power to enforce compliance.

Several other regulatory bodies are also involved in regulating banks in Canada. The Department of Finance Canada helps the Government develop and implement financial sector policy and legislation. The Bank of Canada, which is owned by the Federal Government, helps to keep inflation low, promotes efficient banking systems, is responsible for currency, and is a fiscal agent for the Government. The Canadian Payments Association (d.b.a. Payments Canada) (PC) runs the national clearing and settlement system in Canada. The Canada Deposit Insurance Corporation (CDIC) provides deposit insurance to all member institutions (which includes all major Canadian banks) against the loss of eligible deposits in the event of failure. The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) helps to protect Canada's financial system by detecting and deterring money laundering and terrorist financing under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[2] (Proceeds of Crime Act) and its regulations.

The Ombudsman for Banking Services and Investments is an independent and impartial body that resolves disputes between banks and their customers when a bank is unable to resolve the dispute internally. The Canadian Bankers Association (CBA) advocates for effective policies and works with banks and law enforcement to protect Canadians against financial crimes. Banks in Canada also need to ensure compliance with privacy legislation, which is enforced

by the Office of the Privacy Commissioner of Canada, who has the power to investigate complaints, conduct audits, and pursue court action. Finally, the Financial Institutions Supervisory Committee, whose membership consists of OSFI, the Bank of Canada, the Department of Finance Canada, CDIC and the FCAC, meets to discuss, coordinate, and advise the Federal Government on issues related to the Canadian financial system.

There are also three supranational regulatory bodies that are influential in Canadian banking. The Bank for International Settlements (BIS), of which the Bank of Canada is a member, leads global regulatory work on financial systems across the globe. The Basel Committee on Banking Supervision (Basel Committee) is made up of BIS members, and strengthens worldwide banking through the release of recommendations aimed at enhancing financial stability. Both the Bank of Canada and OSFI are Basel Committee members and are committed to implementing its recommendations. Lastly, the Financial Stability Board (FSB), which consists of G20 countries, monitors and makes recommendations related to the global financial system. The Bank of Canada, OSFI and the Department of Finance Canada are members of the FSB.

Restrictions on activities

The *Bank Act* imposes ownership requirements on banks in Canada. For instance, the *Bank Act* prohibits a person from being a major shareholder of a bank with equity of $12bn or more. Banks with equity of $2bn or more but less than $12bn must have at least 35% of their shares with voting rights listed and posted on a recognised stock exchange and they must not be owned by a major shareholder.

Pursuant to the *Bank Act*, banks are only permitted to carry on the "business of banking", which includes activities such as providing financial services, acting as a financial agent, providing investment counselling, issuing payment, credit, or charge cards, etc. Except when permitted by the *Bank Act*, banks may not "deal in goods, wares or merchandise or engage in any trade or other business".

The *Bank Act* also includes restrictions on undertaking fiduciary activities, guarantees of payment or repayment, dealing in securities, engaging in the insurance business, undertaking personal property leasing activities, and entering into partnerships. Moreover, banks have restrictions on the types of investments they can make and are prohibited from investing in an entity that carries on some of the activities listed above or entities that deal in securities, except in certain circumstances. Banks may invest in securities, but are restricted from making substantial investments (e.g. acquiring more than 10% interest in a non-bank entity) or in controlling certain types of entities. Under s. 468(1) of the *Bank Act*, banks may make a substantial investment in, or take control of, other banks, trust or loan companies, insurance companies, cooperative credit societies, and entities primarily engaged in dealing in securities. However, certain investments nonetheless require the approval of OSFI or the Minister of Finance.

Banks are prohibited from imposing any undue pressure or coercion on a person to obtain a product or service as a condition for obtaining another product or service. Subject to certain exceptions, a bank cannot make a loan to a natural person that contains conditions that prohibit the prepayment of the loan prior to the due date, nor require a natural person to have an initial minimum deposit or maintain a minimum balance with respect to a retail account.

Banks are also prohibited from entering into related party transactions, except as otherwise permitted under the *Bank Act* (for instance, if the value is "nominal or immaterial to the bank").

Recent, impending or proposed changes to the regulatory architecture

The banking architecture in Canada continues to evolve to strengthen financial security and to incorporate international standards.

On January 31, 2020, the Government of Canada published an initial report completed by its Advisory Committee on Open Banking (OB Committee) recommending that the Government move forward to enable open banking in Canada and to develop an open banking framework in collaboration with industry.[3] The OB Committee published its final report on open banking on August 4, 2021, which included recommendations for the vision, scope, and governance of an open banking system in Canada. The OB Committee recommended that consumer-friendly outcomes form the basis of the open banking system in Canada and that financial inclusion and education play a key role. The OB Committee also recommended that the initial scope include data that is "traditionally readily available to consumers through their online banking applications", with the possibility of expansion to other forms of consumer data in the future. However, the OB Committee acknowledged that financial institutions should be permitted to exclude any "derived data", which includes data enhanced by a financial institution to provide additional value or insight to a consumer (e.g. internal credit risk assessment or new product offerings). Also, the initial scope should allow third-party service providers "read only" access to consumer financial data, but not allow them to edit such data.

On March 22, 2022, the Federal Government appointed a new open banking lead that will be responsible for developing Canada's open banking system. In accordance with the OB Committee's final report, the Minister of Finance has also created four open banking working groups to support the development of four essential elements of Canada's open banking framework: accreditation; liability; privacy; and security.[4] The working groups are made up of representatives from consumer groups, banks and other prospective open banking participants. Each working group met several times throughout 2022 and is expected to continue to meet regularly until the end of their term on September 29, 2023.[5] As a result, it appears likely that the open banking system will not be available in Canada until the end of 2023 or early 2024.

On August 17, 2021, the Department of Finance Canada published the *Financial Consumer Protection Framework Regulations*, which came into force on June 30, 2022. The regulations introduce new requirements to protect bank customers, including by raising the maximum amount of a Federal Government cheque that a bank must cash for free from $1,500 to $1,750, prescribing a 56-day period in which a bank must resolve complaints, and amending certain disclosure requirements, including in respect of unauthorised credit card transaction liability.[6]

On September 1, 2021, PC launched the first release of Lynx, Canada's new high-value payments system, which replaces the existing Large Value Transfer System. As part of the second release, PC is currently working on the introduction of ISO 20022 to Lynx.[7] However, on October 27, 2022, Swift officially announced that it was rescheduling its migration to ISO 20022 from November 2022 to March 2023. While PC is continuing to deploy the technology needed to support ISO 20022, the activation of such technology will be postponed to March 2023 to align with Swift's revised implementation date. The transfer to Lynx is a critical part of PC's ongoing plan to modernise the infrastructure, rules, and standards of Canada's national payments systems, a plan that also includes the expected implementation of a new real-time payments system, the Real-Time Rail.

The *Retail Payment Activities Act* (RPAA) was enacted on June 29, 2021 and creates a new regulatory regime for retail payment activities under the supervision of the Bank of Canada. The introduction of the RPAA is a significant milestone in the Canadian retail payments sector, which had previously been largely unregulated. In November 2022, the Bank of Canada introduced an initial supervisory framework under the RRPA, which sets out how it will oversee payment service providers, foster compliance, and monitor and assess trends and issues in the payments system. The supervisory framework will require domestic and foreign payment service providers that direct retail payment activities at individuals or entities in Canada to register with the Bank of Canada. However, the Bank of Canada has noted that the supervisory framework may evolve prior to the RPAA's registration requirements coming into effect, in order to respond to the pending publication of regulations by the Department of Finance Canada. These regulations are expected to clarify the details of the RPAA and are expected to be published for comment in 2023.

In November 2020, the Bank of Canada and OSFI launched a pilot project using climate change scenarios to better understand the risks that a transition to a low-carbon economy could pose to Canada's financial system. The results of this pilot project were released on January 14, 2022. The scenarios developed by the Bank of Canada and OSFI demonstrated, among other things, that mispricing of transition risks could expose financial institutions and investors to sudden and large losses and delay investments needed to help mitigate the impact of climate change. Following the results of the pilot project, OSFI released Draft Guideline B-15 on May 26, 2022, setting out expectations for FRFIs' management of financial risk associated with climate change.[8] The Draft Guideline is aimed at ensuring a healthy and stable financial system in Canada by preparing FRFIs to face the increasingly severe impact of climate change. It outlines OSFI's expectations regarding governance and risk management, introduces expectations regarding climate scenario analysis and capital and liquidity adequacy, and introduces climate-related financial disclosure obligations. In regard to the climate-related disclosures, OSFI expects FRFIs to disclose relatively detailed information regarding the impact of climate-related risks on their business, markets, financial statements, investment strategy, or future cash flows. The disclosure requirements are expected to be implemented by FRFIs on or after fiscal periods ending October 1, 2023.

In recent years, the Department of Finance Canada proposed a series of amendments to the regulations under the Proceeds of Crime Act that govern Canada's anti-money laundering and anti-terrorist financing (AML/ATF) regime. The final amendments came into force in 2021, which update due diligence and beneficial ownership requirements, regulate businesses dealing in virtual currencies, include foreign money service businesses in Canada's AML/ATF regime, clarify a number of existing requirements, and make minor technical changes.

Recent regulatory themes and key regulatory developments in Canada

Canadian banks are subject to the regulatory oversight of OSFI. In 2022, OSFI released its 2022–2025 Strategic Plan, which outlines OSFI's plan to transform itself to fulfil its mandate in the face of new and challenging risks that face Canada's financial institutions.[9] The Strategic Plan is centred on refocusing the delivery of the mandate to further contribute to public confidence in the Canadian financial system, expanding risk management capabilities and risk appetite, and promoting corporate values to help individuals flourish within an operating environment of increasing insecurity.

Basel III reforms

OSFI has publicly affirmed its commitment to participating in the development of international financial standards, and has been proactive in the adoption and implementation

of the Basel III framework of the Basel Committee. On January 31, 2022, OSFI announced revised capital, leverage liquidity and disclosure rules that incorporate the final Basel III banking reforms. The revised rules include a new *Capital Adequacy Requirements* Guideline (CAR Guideline), *Leverage Requirements* Guideline (LR Guideline), *Liquidity Adequacy Requirements* Guideline (LAR Guideline), *SMSB Capital and Liquidity Requirements* Guideline (SMSB Guideline), and separate revised Pillar 3 Disclosure requirements. The revised rules are intended to help ensure that deposit-taking institutions (DTIs) can effectively manage risks through adequate levels of capital and liquidity and bolster the resilience of the Canadian financial system. Most of the revised rules become effective in the second fiscal quarter of 2023, with the rules relating to market risk and credit valuation risk becoming effective in early 2024.[10]

Capital conservation buffer

To avoid breaches of minimum capital requirements, banks in Canada are required to hold a capital conservation buffer, the details of which are set out in OSFI's CAR Guideline.[11] The capital conservation buffer is equal to 2.5% of a bank's risk-weighted assets. Currently, banks in Canada are advised to maintain the minimum Common Equity Tier 1 (CET1) capital ratio, Tier 1 capital ratio and total capital ratio plus the capital conservation buffer.

Domestic systemically important banks (D-SIBs) are required to hold a Domestic Stability Buffer (DSB) intended to cover a range of Pillar 2 systemic vulnerabilities not adequately addressed in the CAR Guideline. The level of the DSB is the same for all D-SIBs and is reviewed by OSFI on a semi-annual basis. Effective as of October 31, 2021, the DSB was increased from 1.00% to 2.50% of total risk-weighted assets (as calculated under the CAR Guideline).[12] OSFI further announced on June 6, 2022 that the DSB would remain at 2.50%.[13]

Leverage requirements

In addition to the CAR Guideline, Canadian banks must maintain a ratio of capital to exposure that meets or exceeds 3% at all times under OSFI's LR Guideline.[14] Recent revisions from OSFI incorporate changes to the specific leverage requirements that are applicable to small and medium-sized institutions, which are more tailored to reflect the size and complexity of those financial institutions. These requirements are reflected in the SMSB Guideline.

Common Equity Tier 1 surcharge

Consistent with the Basel Committee's Basel III framework,[15] OSFI has designated six Canadian institutions as D-SIBs: the Bank of Montreal; the Bank of Nova Scotia; the Canadian Imperial Bank of Commerce; the National Bank of Canada; the Royal Bank of Canada (RBC); and the Toronto-Dominion Bank (TD). These D-SIBs account for approximately 90% of the total assets of Canada's federally regulated DTIs and must comply with heightened regulatory requirements. The imposition of such requirements may offset the potential negative impact of any one D-SIB's failure.

Pursuant to the CAR Guideline, D-SIBs are subject to a CET1 surcharge equivalent to 1% of the D-SIB's risk-weighted assets. This CET1 surcharge is implemented through the extension of the capital conservation buffer. D-SIBs will be restricted in their ability to make distributions such as dividends in the event they do not satisfy their relevant capital conservation ratio.

RBC and TD are also global systemically important banks (G-SIBs) and as such, are required to meet additional requirements.

Total Loss Absorbing Capacity

In April 2018, OSFI published its *Total Loss Absorbing Capacity* (TLAC) Guideline (TLAC Guideline),[16] the purpose of which is to ensure that a non-viable D-SIB has sufficient loss-absorbing capacity to support its recapitalisation. The minimum TLAC ratio is 21.5% of

risk-weighted assets of D-SIBs, and the minimum TLAC leverage ratio is 6.75%.[17] All D-SIBs were required to meet the requirements set out in the TLAC Guideline as of November 1, 2021. In May 2018, OSFI published its *Total Loss Absorbing Capacity* (TLAC) *Disclosure Requirements* Guideline and *Capital Disclosure Requirements* Guideline,[18] which provide robust disclosure requirements and templates, promoting transparency and market discipline with respect to Canadian D-SIBs.

Residential mortgage underwriting

On January 1, 2018, revisions to OSFI's Guideline B-20: *Residential Mortgage Underwriting Practices and Procedures* became effective, which have strengthened mortgage underwriting across Canada.[19] The revisions include recommending that FRFIs develop strong underwriting policies, perform due diligence to record and assess the borrower's identity, background and demonstrated willingness to service their debt obligations on a timely basis, and develop effective credit and counterparty risk management practices and procedures that support residential mortgage underwriting and loan asset portfolio management.

On May 20, 2021, OSFI announced the adoption of a new rate for the calculation of the minimum qualifying rate for uninsured mortgages (residential mortgages with a down payment of 20% or more). Effective as of June 1, 2021, the new minimum qualifying rate for uninsured mortgages is the greater of the mortgage contract rate + 2%, or 5.25%. Additionally, OSFI announced that it would review and communicate the new minimum qualifying rate at least annually, in each December.[20] On December 17, 2021, OSFI confirmed that the minimum qualifying rate for uninsured mortgages would remain the greater of the mortgage contract rate + 2% or 5.25%.[21]

Small and medium-sized deposit-taking institutions

On March 11, 2021, OSFI published the SMSB Guideline. The purpose of the SMSB Guideline is to act as a reference tool to clarify which parts of the CAR Guideline, LR Guideline, and LAR Guideline apply to small and medium-sized deposit-taking institutions (SMSBs). The SMSB Guideline also aims to achieve greater proportionality for SMSBs by striking a balance between improving the risk sensitivity of the requirements for SMSBs and reducing the complexity of the capital and liquidity frameworks to reflect the nature, size and business activities of these smaller DTIs. The SMSB Guideline becomes effective in February 2023 for SMSBs with a fiscal year-end of October 31, and in April 2023 for SMSBs with a fiscal year-end of December 31.[22]

Other

- In April 2020, OSFI's revised Guideline E-22: *Margin Requirements for Non-Centrally Cleared Derivatives* became effective.[23] Changes include clarifying the treatment of securities issued by entities that receive capital support from the US Government and extending the final implementation of the initial margin requirements by one year.
- On January 1, 2021, OSFI's revised Guideline B-12: *Interest Rate Risk Management* became effective for non-D-SIBs (it became effective a year earlier for D-SIBs).[24] The changes incorporate guidance from the Basel Committee with respect to Interest Rate Risk in the Banking Book.
- On March 16, 2021, OSFI published an update to its July 2020 capital ruling, where it concluded that Limited Recourse Capital Notes (LRCNs) issued by DTIs may be recognised as Additional Tier 1 regulatory capital under the CAR Guideline, subject to a cap and a few other limitations. In this revised ruling, OSFI clarified the conditions and limitations of the original ruling.[25]

- On June 28, 2021, OSFI published its final Guideline E-4: *Foreign Entities Operating in Canada on a Branch Basis*, which replaces the existing Guideline E-4B: *Role of the Principal Officer and Record Keeping Requirements*. The new Guideline sets out OSFI's expectations of foreign banks that are authorised to carry on business in Canada on a branch basis, including in respect of branch management (i.e. the individuals who are responsible for overseeing the branch) and administration (e.g. record keeping), and underscores the responsibilities of the foreign entity and its management in overseeing the day-to-day operations of its business in Canada.[26]
- On March 17, 2022, OSFI released a discussion paper introducing new principles for the management of pension investment risk and launched a consultation seeking stakeholder comment on ways to manage pension investment risk.[27]
- On July 13, 2022, OSFI released its new Guideline B-13: *Technology and Cyber Risk Management*, which seeks to help FRFIs develop greater resilience to technology and cyber risks. The new Guideline focuses on three key areas: (i) governance and risk management; (ii) technology operations and resilience; and (iii) cyber security.
- On August 18, 2022, OSFI announced an interim approach for the regulatory capital and liquidity treatment of crypto asset exposures.[28] This approach categorises crypto assets into two groups (Group 1 and Group 2) based on several factors, including whether all entities performing transfer, settlement or redeemability functions of the crypto assets follow robust risk governance and risk control policies. Whether a crypto asset is categorised as a Group 1 or Group 2 crypto asset will affect its treatment in the capital and liquidity requirements set out in the CAR Guideline, LR Guideline and LAR Guideline.
- On November 7, 2022, OSFI released a new *Assurance on Capital, Leverage and Liquidity Returns* Guideline.[29] The purpose of the new Guideline is to provide principles-based and risk-based guidance to external auditors and institutions on assurance over regulatory returns in an effort to enhance and align these expectations across all FRFIs.

Bank governance and internal controls

The legislative requirements for the governance of banks are found in the *Bank Act*, which prescribes the form and degree of governance required. Canadian banks must have a minimum of seven directors: if the bank is a subsidiary of a foreign bank, at least half of its directors must be resident Canadians; and if the bank is a domestic bank, a majority of its directors must be resident Canadians. Banks are prohibited from having more than two-thirds of their directors qualifying as "affiliated" with the bank, which includes but is not limited to the following relationship with the bank: ownership of a significant interest in a class of shares; being a significant borrower; or acting as an officer.

Directors are legally obligated to discharge their duties honestly and in good faith with a view to the best interests of the bank, and are required to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Directors must also establish an audit committee, a conduct review committee, a committee to monitor compliance with public disclosure requirements, and a committee to monitor the resolution of conflicts of interest. The Chief Executive Officer (CEO) of a Canadian bank must be a director of the bank as well as a resident of Canada. A significant feature of the *Bank Act* is the power of the shareholders to remove a bank's directors. A bank's board of directors (Board) is responsible for ensuring that the compensation of employees, senior management (Management) and the Board is aligned with the bank's long-term interests. Compensation for all employees is to be consistent with the FSB's *Principles for Sound Compensation* Guideline and related *Implementation Standards*.[30]

Corporate governance – the role of the Board and Management

Although the legislative regime of the *Bank Act* is fulsome, OSFI publishes guidance documents that detail the practical mechanisms of compliance in the Canadian banking industry. OSFI's *Corporate Governance* Guideline (Governance Guideline)[31] communicates OSFI's expectations with respect to corporate governance and complements the *Bank Act* and OSFI's Supervisory Framework and Assessment Criteria.[32] The Governance Guideline does not apply to the branch operations of foreign banks. It highlights the distinction between the decision-making role of a bank's Board and the decision-implementing role of Management and highlights that the Board should be independent of Management. Apart from the critical separation of the roles of Board Chair and CEO, the Governance Guideline does not prescribe any single Board structure as guaranteeing independence. However, the Governance Guideline suggests that to ensure its effectiveness, a Board should be "diverse and, collectively, bring a balance of expertise, skills, experience, competencies and perspectives, taking into consideration the FRFI's strategy, risk profile, culture and overall operations".[33] Board members should also have expertise in the relevant financial industry and in risk management.

The Board plays a crucial role in the success of a DTI through its approval of overall strategy and risk appetite, as well as oversight of Management and internal controls. Management is responsible for guidance related to significant operational, business, risk and crisis management policies, compensation policies, business and financial performance relative to the strategy and Risk Appetite Framework (RAF) approved by the Board, implementation and effectiveness of internal controls, implementing the Board's decisions and directing the operations of the DTI.

Both Board and Management have significant duties beyond those expressly found in the *Bank Act*. The structure of the bank itself may impose further duties on a Board. For example, a parent company's Board should implement sufficient oversight of a subsidiary's activities to ensure that the parent Board is able to discharge all of its responsibilities to the parent company. The interaction between Management and the Board should occur primarily through the CEO. The Board should supervise the oversight functions of the bank through the engagement of the relevant committees, such as the Audit Committee. The heads of the oversight functions should have sufficient authority and autonomy from Management and should have unfettered and direct access to the Board or the relevant Board committee for reporting purposes.

Risk governance

One focal element of the Governance Guideline is the concept of risk governance, which OSFI characterises as a distinct and crucial element of corporate governance in Canada. Banks should be in a position to identify the important risks they face, assess their potential impact, and have policies and controls in place to effectively manage them.

Measures endorsed in the Governance Guideline include the creation of a Board Risk Committee and the appointment of a Chief Risk Officer (CRO). The CRO should have the necessary stature and authority within the bank and be independent from operational management. The CRO should not be directly involved in revenue generation, and their compensation should not be linked to the bank's performance of specific business lines. The CRO should have unfettered access to, and a direct reporting line to, the Board or Risk Committee.

OSFI's *Enterprise-Wide Model Risk Management for Deposit-Taking Institutions* Guideline[34] ensures that all DTIs have a baseline understanding of the minimum level of expectations with respect to their use of models that could have a material impact on their

risk profile. Internal Models Approved Institutions are subject to all components of the Guideline, whereas Standardised Institutions are only required to comply with the minimum expectations (but should strive to comply with the entire Guideline).

OSFI's *Large Exposure Limits for Domestic Systemically Important Banks* Guideline[35] sets out a framework to limit the potential loss that would be suffered by a D-SIB as a result of a sudden failure of an individual counterparty or group of connected counterparties. The Guideline includes reporting requirements for D-SIBs and requires them to create and implement procedures for identifying, correcting, and notifying OSFI of breaches of large exposure limits. In the Guideline, OSFI makes clear that D-SIBs should have a large exposure policy that is consistent with its RAF.

The role of the Audit Committee

The Governance Guideline also expands upon the relevant duties of the Audit Committee as mandated by the *Bank Act*. The Audit Committee, not Management, should recommend to the shareholders the appointment and removal of the external auditor for the bank. The Audit Committee should agree to the scope and terms of the audit engagement, review and recommend for approval by the Board the engagement letter and remuneration for the external auditor, and discuss with Management and the external auditor the overall results of the audit, the financial statements, and any related concerns raised by the external auditor.

The Audit Committee should satisfy itself that the financial statements fairly represent the financial positions, the results of operations, and the cash flow of the DTI. In order to do so, the Audit Committee should meet with the external auditor, the internal auditor, and other heads of the oversight function, as appropriate, with and without Management.

Consumer Protection Committee

The *Bank Act* requires that the directors of a bank establish a committee to monitor compliance with public disclosure requirements and complaint procedures (Consumer Protection Committee). On June 30, 2022, amendments to the *Bank Act* came into force, which provided further detail regarding the composition of the Consumer Protection Committee and the scope of its duties.[36] The Consumer Protection Committee must be composed of a minimum of three directors, a majority of which must not be affiliated with the bank. None of the members of the Consumer Protection Committee may be officers or employees of the bank or of a subsidiary of the bank. The Consumer Protection Committee must also require a bank's Management to establish procedures for complying with consumer protection provisions and to give annual reports on the implementation of consumer protection activities. The directors of a bank are required to report annually as to the activities of the Consumer Protection Committee during the previous financial year.

Whistleblowing

On June 30, 2022, a new whistleblower regime under the *Bank Act* became effective.[37] Under this new regime, banks must establish and implement policies and procedures to address wrongdoings that have been reported by an employee. Banks must also ensure that employees of any third parties dealing with the bank have access to the bank's whistleblower policies and procedures and can report wrongdoings to the bank or the relevant third party in the same manner. The bank's whistleblower policies and procedures must provide that employees have the choice of reporting any wrongdoing internally at the bank or directly to OSFI, the FCAC, any other government agency or body that regulates or supervises financial institutions or a law enforcement agency.[38]

Third-party arrangements

In April 2022, OSFI released Draft Guideline B-10: *Third-Party Risk Management*, which sets out OSFI's expectations for FRFIs for managing risks associated with third-party arrangements. The Draft Guideline was subject to a comment period, which closed on September 30, 2022. The final Guideline has not yet been issued, but is expected to be released by early 2023. The Guideline will apply to all FRFIs, except foreign bank branches. In the new Guideline, OSFI highlights that FRFI's are afforded the flexibility to arrange its operations in a manner that allows it to achieve its business and strategic objectives. However, in line with current guidelines, FRFIs will remain responsible for all business activities, functions and services that are outsourced through third-party arrangements.

The FRFI and the applicable third party are expected to establish and maintain appropriate measures to protect the confidentiality, integrity and availability of records and data throughout the duration of the third-party arrangement. Additionally, the third-party arrangement should permit the FRFI timely access to accurate and comprehensive information to assist it in overseeing third-party performance and risks, and allow the FRFI to conduct or commission an independent audit of the third party. The FRFI is also expected to develop a Third-Party Risk Management Program. OSFI expects the FRFI to manage third-party risks in a manner that is proportionate to the level of risk and complexity of the FRFI's third-party ecosystem. All risks posed by third parties are to be assessed, managed and mitigated within the FRFI's RAF.

Bank capital requirements

Part X of the *Bank Act* requires Canadian banks to maintain adequate capital and adequate and appropriate forms of liquidity. OSFI is authorised under the *Bank Act* to establish guidelines respecting both the maintenance of adequate capital and adequate and appropriate forms of liquidity. The CAR Guideline supplements the *Bank Act* and implements the related Basel III capital rules without significant deviation.

In accordance with the LR Guideline, OSFI has the power to prescribe leverage ratio requirements for specific institutions on the basis of a number of factors, including the institution's risk-based capital ratios compared to internal targets and OSFI targets, the adequacy of capital and liquidity management processes and procedures, and the institution's risk profile and business lines. The authorised leverage ratio for individual institutions is not publicly disclosed.

A bail-in regime for D-SIBs has been in effect since September 2018 (mostly pursuant to the *Canadian Deposit Insurance Corporation Act* and its regulations) allowing the Government of Canada to convert certain debt of a failing D-SIB into common shares to recapitalise the bank. Only prescribed long-term debt is subject to the bail-in power, and deposits are excluded. The legislative regime defines the conditions for the conversion of instruments eligible for bail-in, outlines the terms that must be adhered to upon issuance of an eligible bail-in instrument, and establishes a framework to determine compensation for those entitled under the regulations.

The purpose of the TLAC Guideline (discussed above) is to provide a non-viable D-SIB with sufficient loss-absorbing capacity to support recapitalisation in the event of failure. This would facilitate an orderly resolution of the D-SIB while minimising adverse impacts on the stability of the financial sector and taxpayers' exposure to loss.

The TLAC Guideline, together with the CAR Guideline and the LR Guideline (each as discussed above), help to form the framework for the assessment of whether a D-SIB maintains its minimum capacity to absorb losses, in accordance with the *Bank Act*.

As part of compliance and monitoring requirements, DTIs (other than foreign bank branches) provide OSFI with quarterly Basel Capital Adequacy Reporting.[39] If reporting indicates deteriorating capital, the DTI may be subject to escalating stages of intervention, starting with additional reporting requirements and continuing to specific temporary restrictions on business lines. OSFI's *Net Stable Funding Ratio Disclosure Requirements* Guideline requires quarterly disclosure about key quantitative information relating to the Net Stable Funding Ratio of D-SIBs.

Additionally, OSFI has the authority to direct an FRFI to increase its capital if it determines that such FRFI is undercapitalised or, in severe cases, to take control of the assets of the FRFI or of the FRFI itself.

Rules governing banks' relationships with their customers and other third parties

The *Bank Act* and specific regulations thereunder have detailed provisions relating to consumer protection. Among other things, the *Bank Act* and related regulations contain requirements for the simplified disclosure to customers of the cost of borrowing and interest rates.

The FCAC has the mandate of administering consumer protection provisions of the *Bank Act*. Pursuant to the *Financial Consumer Agency of Canada Act*,[40] the FCAC's mandate includes: (i) supervision of FRFIs to ensure that they comply with federal consumer protection measures; (ii) promotion of the adoption of policies and procedures with respect to voluntary codes of conduct and FRFIs' public commitments designed to implement consumer protection measures; and (iii) supervision of payment card network operators and promotion of consumer financial awareness. The FCAC also promotes public awareness about the consumer protection obligations of FRFIs and payment card network operators. The FCAC has the power to, for example, impose monetary penalties and criminal sanctions. For minor oversights, the FCAC will work with the FRFI to rectify the issue. The FCAC's Supervision Framework describes the principles and processes applied by the FCAC to supervise FRFIs and ensure that financial consumers and merchants continue to benefit from applicable protections. In addition, the Consumer Framework has expanded the FCAC's mandate to, for example, enhance the scope of the FCAC's authority to impose increased monetary penalties on banks and to require quarterly complaints reporting.

The CBA's voluntary *Code of Conduct for the Delivery of Banking Services to Seniors* (Code) reinforces existing initiatives and resources used by banks and their staff to respond to the unique, evolving needs of senior customers.[41] The FCAC monitors compliance with the Code, which requires banks to, for instance, mitigate potential financial harm to seniors and account for market demographics and the needs of seniors when proceeding with branch closures. Banks began implementing requirements under the Code on January 1, 2021.

CDIC is a statutory corporation funded through premiums charged to member institutions that provides deposit insurance on certain types of small deposits. CDIC insures up to $100,000 per customer, per financial institution, per insured category of deposits for certain eligible Canadian dollar-denominated deposits (including savings accounts, chequing accounts, and term deposits with an original term to maturity of five years or less). On April 30, 2022, the CDIC deposit protection regime was updated to, among other things, (i) add separate coverage for up to $100,000 in eligible deposits held in a Registered Education Savings Plan and a Registered Disability Savings Plan, (ii) remove separate coverage for deposits in mortgage tax accounts, and (iii) add new requirements for deposits held in trust that enhance CDIC's ability to extend protection to these deposits and reimburse quickly after a CDIC member failure.[42]

With respect to customer information and privacy, Canadian banks must comply with the *Personal Information Protection and Electronic Documents Act* (PIPEDA). In addition, all banks in Canada have a common law duty of confidentiality in their dealings with customers and in customer identification. PIPEDA provides a regulatory regime in respect of the collection, use and sharing of personal information in the context of commercial activities, and requires that institutions obtain an individual's consent prior to using such personal information. Canadian banks have a positive duty to safeguard personal information that has been collected, and to abide by the limits on the retention of personal information, as set out in PIPEDA.

On August 13, 2021, OSFI released an updated Cyber Security Self-Assessment to assist FRFIs in improving their readiness for emerging and expanding cyber threats.[43] At the same time, OSFI also released updated guidance on how FRFIs should report and disclose technology and cyber incidents to OSFI in the *Technology and Cyber Security Incident Advisory* (Technology Advisory). Under the Technology Advisory, FRFIs must report a technology or cyber security incident to OSFI's Technology Risk Division and its lead supervisor within 24 hours. The Technology Advisory also indicates that where an FRFI fails to report a cyber incident, it could be subject to increased oversight by OSFI, put on a watch list, or assigned to one of the stages of OSFI's supervisory intervention approach.[44]

Banks are also required to comply with Canada's Anti-Spam Legislation (CASL), which regulates unsolicited commercial electronic communications sent by commercial enterprises to individuals. CASL applies to all electronic messages and requires the prior consent (express or implied) of the recipient before any such message can be sent, and includes mechanisms for civil recourse as well as monetary penalties and criminal charges for non-compliance.

* * *

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